CONTRACTS TO MAKE CONTRACTS p. 476

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The Solicitors' Journal

VOL. LXXX. **Saturday, June 20, 1936.** No. 25

Current Topics: The Holdsworth Club—Budget Leakage Inquiry—Finance Act: Tax Avoidance Provisions — One-man Companies — Revocable Settlements — Educational Trusts—The Sale of Coal: Central and District Schemes—The Tithe Bill in Committee—Admiralty Practice: Admission of Facts and Denial of Inferences — Recent Decisions 473
Contracts to make Contracts 476
Setting aside Judgment by Default .. 477
Company Law and Practice 478
A Conveyancer's Diary 479
Landlord and Tenant Notebook .. 480
Our County Court Letter 481
Obituary 481
Points in Practice 482
To-day and Yesterday 484
Notes of Cases—
Commissioners of Inland Revenue *v.* Crossman and Others; Same *v.* Mann and Others 485
In re Fletcher's Settlement Trusts: Medley *v.* Fletcher 486
In re Crocker 486
In re Ward's Will Trusts: Ringland *v.* Ward 486
Boag *v.* Standard Marine Insurance Co. Ltd. 487
Governors of Queen Anne's Bounty *v.* Pitt-Rivers 487
Hollywood Silver Fox Farm Ltd. *v.* Emmett 488
Furness Withy & Co. Ltd. *v.* Duder 488
Moor Line, Ltd. *v.* Mangan Export G. m. b. H. 489
Correspondence 489
Reviews 490
Books Received 490
Societies 490
Parliamentary News 491
Legal Notes and News 492
Court Papers 492
Stock Exchange Prices of certain Trustee Securities 492

Current Topics.

The Holdsworth Club.

Some years ago the students of the Faculty of Law in the University of Birmingham conceived the happy idea of founding what became known as the Holdsworth Club, so named in honour of Professor Holdsworth, K.C., the distinguished author of the "History of English Law" which for the first time gave us a clear view of the origin and development of our legal system. Among the praiseworthy activities of the club is the practice of inviting some prominent member of the judiciary or the profession to fill the role of President for the year, and to obtain from him an address on some legal subject of interest. In 1930, Lord Atkin, the President for the year, delivered an illuminating and stimulating address on "Law and Civic Life," in the course of which he wisely remarked that in view of so much ill-considered criticism of law and lawyers, it was the duty of every member of the profession to explain, maintain, and defend the law and its practitioners from the aspersions so frequently cast upon them. Later, Lord Macmillan, a succeeding President, gave an equally interesting address on the importance of clarity of expression in legal documents. Now, the Lord Chancellor, as the President of the Club for the present year, has been discoursing to its members on the duties of his high judicial office—duties which in their amazing variety are so remarkable as sometimes in their collocation to evoke a smile. Turning, for example, to the index to that excellent work on "Constitutional Law" by Mr. Wade and Mr. Phillips, we find *sub voce* "Lord Chancellor" the consecutive entries: "Care of lunatics," "Custody of Great Seal"; but even that index, copious as it is, is not exhaustive of the functions which fall to the Lord Chancellor, for no specific reference is made to his ecclesiastical patronage, the exercise of which has, we learn, not invariably given universal satisfaction. It is on record that the presentation by a bygone Lord Chancellor to a vacant living evoked from a very Evangelical lady the pathetic comment: "We looked for a cedar of Lebanon, and you have sent us a cabbage!" In due course, we trust the Lord Chancellor's address at Birmingham will be made generally accessible as were those of Lord Atkin and Lord Macmillan.

Budget Leakage Inquiry.

An interesting statement was recently made by the Attorney-General in answer to a question put to him in the House of Commons with regard to the Budget Inquiry. He had, he said, considered the question whether he should institute criminal proceedings under the Official Secrets Act against all or some of those affected by the findings of the Tribunal set up by resolutions of both Houses of Parliament under the Tribunals of Inquiry (Evidence) Act, 1921, and, while suggesting that the House would not expect him to go in detail into the various legal considerations, he stated that there could not be an offence under s. 2 (2) of the Act aforesaid unless an offence of an unauthorised communication under s. 2 (1) was first proved. The unauthorised communication must, in his opinion, be deliberate. This, he urged, was important, as the accused was entitled to the benefit of every doubt, and if there were doubt as to whether any disclosure was deliberate or inadvertent, the accused would be entitled to be acquitted. He also had in mind considerations based on the general principles on which criminal justice is administered in this country. "Much of the relevant evidence in my possession," Sir Donald Somervell said, "was given by those whose conduct is now in question to a Tribunal with wide powers of summoning witnesses and calling for documents. I am not, of course, suggesting that in no case should a prosecution follow on the report of such a tribunal, but it would be somewhat foreign to our general methods that information which results from the existence or exercise of wide powers of compulsory interrogation and discovery of documents of this kind should be made the basis of a subsequent criminal charge." One further point was made. In a criminal trial it is, of course, a fundamental principle that the jury should act, and act only, on the evidence given before them. It would, the Attorney-General intimated, be impossible in this instance to obtain a jury who were not familiar with the findings of the Tribunal and with much of the evidence which had been given. In these circumstances, it had been decided not to institute criminal proceedings. In answer to questions addressed to him, the Attorney-General reiterated the following day his view that for an offence to be proved under s. 2 (1) of the Official Secrets Act the communication must be deliberate and accompanied by evil intent. His view that the offence of receiving under sub-s. (2) of that section could not be proved unless the evidence established an offence under sub-s. (1) disclosed, he agreed, a possible gap in the Act, concerning which he would consider whether some action ought to be taken. Sir Stafford Cripps took a different view of the Act. Conviction under sub-s. (1) was not a condition precedent to proceeding under sub-s. (2). Under the latter—which provides in effect that a person receiving any information, knowing or having reasonable ground to believe that the information was communicated in contravention of the Act, shall be guilty of a misdemeanour—the guilty mind was, it was urged, the mind that believed it had received information in contravention of the Act. That, it was said, was almost easy to assume if the person got information to which he knew he was not entitled from a person whom he knew was not entitled to give it to him. Sir Stafford also joined issue with the Attorney-General on

the question whether evil intent must be shown under sub-s. (1). It was quite clear, he said, that there was no such word as " deliberately " inserted in the section, and if they looked at s. 12, which was the definition section dealing with communication or receiving, it became perfectly plain that it was not limited to an intentional or deliberate communication.

Finance Act: Tax Avoidance Provisions.

SEVERAL points of interest are to be noted in connection with the discussion by the House of Commons in Committee of the provisions of the Finance Act, which are designed to prevent various methods hitherto successfully adopted to avoid payment of income tax. The main lines of the clauses have already been indicated, and the following is to be regarded as supplementary to information on the matter which has already appeared in these pages. In response to a motion to omit the proviso which saves from the operation of cl. 16 transfers of capital abroad and associated activities where the individual can show to the satisfaction of the Special Commissioners that these were effected mainly for some purpose other than that of avoiding liability to taxation, Mr. W. S. MORRISON, Financial Secretary to the Treasury, urged that quite legitimate commercial activities would be handicapped if the proviso were no longer to form part of the Bill. But in view of further difficulties pointing to possible defects in drafting he agreed to reconsider the wording of the proviso. A further amendment, which had for its object the placing of the onus that a person was attempting to evade taxation by transfer of his assets abroad on the Commissioners of Inland Revenue, was withdrawn. The mover of this amendment urged that in the clause as drafted the onus of proof was thrown entirely upon the taxpayer. He had to prove himself innocent instead of the authorities proving him guilty. That was a complete change in the whole system on which the Income Tax Acts worked. The Commissioners were, moreover, in the clause as drafted, going to be entirely judges of their own case. In reply, the Attorney-General said that a man might transfer assets abroad for the purpose of establishing a business, and the object of the proviso was to enable such a person to escape the operation of the clause. It was not a question of presuming a man guilty until he proved himself innocent but of allowing a man to escape from the general principle if he could satisfy the Commissioners that the purpose for which he undertook the transaction was not the purpose of tax avoidance against which the clause was aimed. The Chancellor of the Exchequer indicated that he would be willing to consider a practical suggestion for meeting the point raised. The same speaker intimated that the removal of the word " mainly," suggested by a further amendment, would be quite fatal to the clause. In such a case it could not operate if any taxpayer could give any reason whatever, in addition to avoidance of tax, for his action in transferring some of his assets abroad. The substitution of " solely " for " mainly " was likewise successfully opposed. The effect of such would be, it was said, that although a taxpayer's main purpose was other than tax avoidance it would be extremely difficult for him to show that he was not influenced by the fact that he would be relieved of some taxation. The principle that tax statutes should be interpreted strictly against the Crown and in favour of the subject was cited in support of an amendment to delete from sub-cl. (4) of the same clause the words " regard shall be had to the substantial result and effect of the transfer and any associated operations." The Attorney-General, in reply, said that the whole subject-matter of the clause was really the use of legal forms designed for ordinary commercial and financial trade for the purpose of dealing with tax avoidance. There had been a number of cases in which the courts had said that in revenue matters they were entitled to look at the substance of the matter and to disregard the legal form. These words would enable the Commissioners, instead of being tied by the letter of a legal form, to look at the substantial result of the transaction.

One-man Companies.

MR. W. S. MORRISON moved an amendment, which was accepted, to cl. 18 providing that the sums which are to be regarded as income available for distribution among the members of an investment company, and not as having been applied or been applicable to the current requirements of the company's business or to such other requirements as may be necessary or advisable for the maintenance and development of that business, shall include any sum expended or applied, out of the income of the company, in or towards the redemption, repayment or discharge of any loan, capital or debt (including any premium thereon) in respect of which any person is alone creditor of the company. He explained that clauses 17 and 18 were designed to stop tax avoidance by means of one-man companies. The latter applied the principle, somewhat more stringently, to the investment company. When dealing with the questions of one-man companies as a whole, one had to be careful to avoid injuring the proper industrial company. With the investment company, whose purpose was the holding of blocks of securities and which had no operative or industrial functions, it was clear that they could go a great deal further in the provisions to stop tax evasion. Clause 18 was an attempt to counter certain forms of tax evasion which had grown up along with the investment company, and the object of the amendment was to ensure that an investment company which had made no distribution, or only a small distribution, in sur-taxable form could not escape with regard to the special provisions of taxation in cl. 17. Another amendment agreed to on this part of the Bill was described by the Attorney-General, who moved it, as a proviso designed to meet the case in which debenture or other loan capital was held in the name of nominees or trustees. Under this proviso, property held in the name of nominees or trustees is to be dealt with on the same footing as if it were held in the name of the real owner. It was explained that the general intention of all this part of the Bill was that people should not be able to alter their position by putting a screen of nominees between them and their taxable capacity.

Revocable Settlements.

IN moving the first of a series of amendments relating to revocable deeds entered into before 22nd April, the Chancellor of the Exchequer stated that it had occurred to some ingenious people that revocable settlements might become irrevocable by supplementary deeds. This information, he said, had been circulated, and a number of supplementary deeds to that effect had been drawn up. The amendment, which was accepted, made it quite clear that if a settlement was revocable before 22nd April it could not be made irrevocable. In response to a suggestion to the effect that settlors should be given up to 1st December next, to decide whether they wished to leave their settlements revocable or make them irrevocable, a promise was given to look into the matter before the Bill was considered on the report stage. An amendment to limit to any settlor or trustee the power conferred on the Commissioners to require information to be furnished to them was withdrawn after a statement was made by the Attorney-General that the Chancellor of the Exchequer undertook before the report stage to consider the matter and seek to get a form of words which, without hampering the Commissioners in the duty which Parliament desired them to perform, would not confer on them unnecessarily wide powers and which might be far beyond anything they desired to exercise or which it might be necessary for them to exercise. While the existing words " any person " might, it was intimated, be unnecessarily wide, the words in the amendment might be too narrow. Replying to an amendment to omit the paragraph defining " settlor " which, it was stated, would prove unfair to trustees, the Financial Secretary to the Treasury indicated that the Chancellor of the Exchequer

proposed to meet the substance of the grievance complained of by introducing on the report stage a re-drafted series of definitions which would have the object of excluding innocent cases of indemnification from the clause.

Educational Trusts.

CLAUSE 19, which contains the provisions relating to income settled on children, was ordered, with minor amendments, to stand part of the Bill on Tuesday, but not before a good deal of criticism had been directed against its wording. Sir J. WITHERS roundly stated that the clause was the most complicated one he had had to deal with in his life. He had, he said, had to deal with settlements of various kinds for the last forty-five years. He had taken this clause home with him and tried to read and understand it and he had absolutely and entirely failed. He had sent it to the best counsel at the Bar and he had received letters from them saying that it was absolutely and totally unintelligible. If that were so, what, he asked, would happen when the Bill was passed and came before the courts? The Financial Secretary to the Treasury intimated that criticisms of the language of the clause and its obscurity were not unexpected, nor did he deny that the language used was highly technical in some parts of the clause. To some extent that was inevitable, because the clause dealt with trusts, dispositions and settlements, which were not so pelucid as the language which Sir J. WITHERS was urging the Chancellor of the Exchequer to adopt. Clarity was a very desirable thing, but certainty of meaning was no less desirable. Mr. MORRISON indicated, however, that what he described as the main case of obscurity, sub-cl. (7), would be considered before the report stage was reached.

The Sale of Coal: Central and District Schemes.

IN our issue of 9th May we referred to a statement made in the House of Commons by Captain CROOKSHANK, Secretary to the Mines Department, relating to the submission of district coal selling schemes under s. 3 (4) of the Coal Mines Act, 1930. At the time of writing, these have now been laid on the table of the House of Commons for some time and will have statutory force unless vetoed by a resolution of either House from the day when they were so laid. The Central Coal Selling Scheme was laid on the table of the House of Commons on 10th June. This scheme must be approved by an affirmative resolution of each House of Parliament before it can come into force. *The Times* recently announced that it was the intention of the Government to move the approval of the scheme while the district schemes were still on the table, so that the purpose and the machinery of all the schemes might be comprehensively debated. With a view to preventing undercutting of prices, the scheme imposes on the Central Council a duty of reviewing the district prices and of requiring any adjustments which it considers necessary. The Central Council is, in effect, invested with powers of initiative in the co-ordination of district minimum prices. Hitherto it has been able to take action only on a specific representation or complaint from a district. In point of fact no district has lodged a complaint.

The Tithe Bill in Committee.

CONSIDERATION of the Tithe Bill by the Standing Committee of the House of Commons was resumed on 11th June, when an amendment to cl. 10, which is concerned with apportionment and extinguishment of certain annuities, moved by Mr. SPENS, was accepted by the Government, to add a provision to the effect that where an annuity is charged in respect of land, comprising in part an agricultural holding and in part other land, the Tithe Redemption Commission may, if so requested by the owner of the land, apportion the annuity as between the agricultural holding and the other land in such manner as appears to them to be just and equitable. Another amendment agreed to was moved by the Minister of Agriculture and Fisheries, and provides for the substitution in cl. 13 of five-sixths for two-thirds as the amount of each instalment of an annuity which, for all the purposes of the Income Tax Acts, shall be deemed to be a payment by way of interest, and the amount to be allowed as a deduction from the annual value, as assessed under Sched. A, of the lands in respect of which the annuity is charged.

Admiralty Practice: Admission of Facts and Denial of Inferences.

AFTER delivering judgment in a recent case, *The Cornish Rose* (*The Times*, 12th June), a salvage case, the facts of which are of no particular legal importance, the President of the Probate, Divorce and Admiralty Division made the following statement in regard to a point of admiralty practice in cases where there was a defence of admission of facts and denial of inferences to be drawn therefrom. The practice that neither side should call witnesses in such cases was, it was intimated, a useful one and should stand. Continuing, the learned President "saw no reason, however, why either side should not make use of contemporary documents for the purpose of getting the atmosphere which would enable the court to draw the right inferences from the facts. But it was desirable, if either side wanted to use documents, that reasonable notice should be given to the other side so as to enable them to consider the advisability of countering by putting in other documents." The foregoing is cited from *The Times* report referred to above.

Recent Decisions.

IN *Mahadeo* v. *The King* (*The Times*, 12th June), the Judicial Committee of the Privy Council allowed an appeal from a conviction of murder by the Supreme Court of Fiji. The trial, it was held, was so conducted as to exhibit in three respects a neglect of the fundamental rules of practice necessary for the due protection of prisoners and the safe administration of criminal justice, namely, by the exclusion of certain statements, the restriction of the address by counsel, and by the neglect of the rule that the evidence of an accessory requires corroboration on the accused's implication in the crime and that the evidence of one accomplice is not available as corroboration of another: *Rex* v. *Baskerville* [1916] 2 K.B. 658. Readers must be referred to the report for details of these defects. In addition, the most serious objection to the decision of the Supreme Court of Fiji was that there were no materials for a conviction of murder as opposed to manslaughter: *Woolmington* v. *Director of Public Prosecutions* [1935] A.C. 462.

A settlement was reached in *Scarlett* v. *Jack Eggar Ltd.* (*The Times*, 13th June), during the hearing of the case before the Court of Appeal, whereby the plaintiff should receive one-half of the amount of damages recovered in the court below in respect of personal injuries sustained by tripping over a rectangular sill placed as a support for a stage scenery door, and on the footing that each party should bear their own costs in the Court of Appeal (those in the court below had been paid by the appellants). Counsel for the appellants explained that the settlement would prevent there being a decision that the mere use of the rectangular bar was negligence. The previous hearing was noted in this column in our issue of 4th January last (80 SOL. J. 3).

IN *O'Shea* v. *Moyce and Another* (*The Times*, 13th June), the plaintiff, whose panel doctor had given her a certificate that she ought to see a dentist, recovered £250 damages for trespass in respect of what was held to be wrongful removal of certain lower teeth, and improper advice concerning her upper teeth. She had, moreover, SWIFT, J., intimated, suffered a great deal of pain and annoyance and her health was much run down as a result of what had been done in the surgery.

Contracts to make Contracts.

THE enormous number of cases which have been reported on the subject of agreements which are unenforceable as contracts because they are made subject to a contract being subsequently entered into, renders the task of those advising on the validity or otherwise of such agreements one of great difficulty. It is fortunately not necessary to consider all of the fifty or more authorities on the point, as they were ably summarised by Russell, J., in *Rossdale* v. *Denny* [1921] 1 Ch., pp. 57, 59, where he said: "Numerous authorities exist upon this question, and a careful selection has been produced to me by both sides. The result of them may, I think, be fairly stated in this way: they are unanimous in this: that the question is one entirely depending on the true construction of the documents. If upon the true construction of the documents the reference to a formal contract amounts to an expression of a desire on the part of one or other of the parties, or both, that their already complete contract should be reduced into a more formal shape, then the fact that no such contract had been executed is no defence to the action, but the original and complete contract survives and may be enforced. If, on the other hand, the true construction of the documents is this, that either the offer or acceptance was conditional only, then the non-execution of a formal contract affords a defence to the action upon the ground that the parties really did not intend to be bound until a formal document had in fact been executed."

The cases in which no contract has been held to exist owing to the inclusion of such words as "subject to formal contract" are legion, and no responsible adviser would nowadays include such words in a document he intends to be binding. Russell, J., noted a few cases in which the words "subject to" appeared (at p. 64 of [1921] 1 Ch.), in only two of which there was held to be an absolute contract. One was a bad decision of Kekewich, J., and the other was a case resting on peculiar facts. Lord Sterndale, M.R., at p. 66 of [1921] 1 Ch. said: "I am far from saying that there may not be an unconditional offer and acceptance of a binding contract although the letters may contain the words 'subject to a formal contract,' but certainly those words do point in the direction of the offer or acceptance being conditional." Sargant, L.J., in *Chillingworth* v. *Esche* [1924] 1 Ch., pp. 97, 114, said: "I do not say that the phrase makes the contract containing it necessarily and whatever the context a conditional contract. But they are words appropriate for introducing a condition, and it would require a very strong and exceptional case for this clear *primâ facie* meaning to be displaced." When presented, however, with a *fait accompli*, there always should be borne in mind the other point of view, that words resembling these may be open to the construction that the agreement was intended to be binding and complete, but the parties desired a more formal shape for their already complete contract. That possibility is well expressed in Lord Hatherley's words in the House of Lords in *Rossiter* v. *Miller* (1878), 3 A.C., pp. 1124, 1143: "If the parties to the agreement, the thing to be sold, the price to be paid, and all those matters, be clearly and distinctly stated, although only by letter, an acceptance by letter will not the less constitute an agreement in the full sense between the parties merely because that letter may say, we will have this agreement put into due form by a solicitor."

The conditional and therefore unenforceable contract has sometimes been described as a "contract to enter into a contract." In *Von Hatzfeldt-Wildenberg* v. *Alexander* [1912] 1 Ch. 284, Parker, J., said: "It appears to be well settled by the authorities that if the documents or letters relied upon as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract, either because the condition is unfulfilled or because the law does not recognise a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored. The fact that the reference to the more formal document is in words which according to their natural construction impute a condition is generally if not invariably conclusive against the reference being treated as the expression of a mere desire." Sargant, L.J., in *Chillingworth* v. *Esche* [1924] 1 Ch. 97, 113, expanded and corrected this suggestion that contracts to enter into contracts were never enforceable. He said: "In the strictest sense of the words the court will often enforce a contract to make a contract. The specific performance of a formal agreement of purchase is the enforcement of a contract to make a contract; the ultimate conveyance being often in itself in many respects a contract. The same remarks apply to the specific performance of a clause in a lease giving the lessee an option to purchase the superior interest of the lessor, freehold or leasehold, as the case may be. The true meaning of the phrase is that the court will not enforce a contract to make a second contract part of the terms of which are indeterminate and have yet to be agreed, so that there is not any definite contract at all which can be enforced, but only an agreement for a contract some of the terms of which are not yet agreed."

The question of the enforceability of arrangements to make future contracts arose in a rather novel form recently before Mr. Justice Hawke in *Astor Properties Limited* v. *Tunbridge Wells Equitable Friendly Society* (1936), 80 SOL. J. 366. The defendants wrote to the plaintiffs informing them of their readiness to grant them a loan of £14,000 on certain properties, repayment to be at the rate of £70 a quarter for the first ten years and "the amount of repayment to be reconsidered at the end of that period." The plaintiffs accepted the defendants' offer but the defendants later repudiated it and refused to proceed. The plaintiffs sued for damages for breach of contract. His lordship said that there could be no doubt about the principle that an agreement to make an agreement was not an enforceable contract. The question was whether the parties had made an agreement for a loan of £14,000 spread over a definite period or had made an agreement for the loan for a time, agreeing together that when that time was at an end they would come to another agreement. His lordship thought that the second alternative was the correct view of the transaction, and added that if it could have been said that the term of ten years was to be affected by something which was to happen later, then he would no doubt have been driven to the conclusion that the whole was one contract, and the matter would have had to be treated as a bargain to make a bargain. Judgment was given for the plaintiffs.

This case was undoubtedly difficult, especially in view of the words of Sargant L.J., in *Chillingworth* v. *Esche* quoted above. The other passage quoted above from *Von Hatzfeldt-Wildenberg* v. *Alexander* was also cited before Hawke, J., who held it to be inapplicable to the facts of *Astor Properties Limited* v. *Tunbridge Wells Equitable Friendly Society*. It is submitted that the judgment of Sargant L.J., in *Chillingworth* v. *Esche*, where he instanced a formal agreement to purchase as an example of an enforceable contract to make a contract, is the best authority to follow in these cases and that it might have been more accurate to describe the *Astor Properties Case* as expanding that authority by way of illustration of the type of contract to make a contract which the law regards as enforceable.

Professor W. F. Trotter, who has been Dean of the Faculty of Law at Sheffield University since 1909, will retire at the end of the present session.

Setting aside Judgment by Default.

" A MAN shall not be allowed to blow hot and cold—to affirm at one time and deny at another . . ." per Wilde, B., in *Cave* v. *Mills*, 7 H. & N. 913 (at p. 927).

This is a broad principle of law and was recently applied by the majority of the Court of Appeal to a case where the defendant, having had judgment against him in default of appearance and having obtained time in which to pay, afterwards sought to have the judgment set aside on the ground that he had a defence.

The Master refused the application. The Judge in Chambers (Greaves-Lord, J.) reversed his order. The Court of Appeal, by a majority (Slesser and Scott, L.JJ., Greer, L.J., dissenting), restored the order of the Master, and dismissed the application of the defendant to have the judgment set aside. *Bartlam* v. *Evans* (1936), 52 T.L.R. 161.

Order XXVII, r. 15, reads as follows :—

" Any judgment by default, whether under this Order [headed : ' Default of Pleading '] or under any other of these rules, may be set aside by the court or a judge, upon such terms as to costs or otherwise as such court or judge may think fit . . ."

Greer, L.J., put his ground of dissent in this sentence :—

" The jurisdiction to exercise his discretion is given to the Judge in Chambers and is not given to the Court of Appeal."

Interpreting the rule or principle, *any* judgment by default may be set aside.

Now the plaintiff was a bookmaker and the defendant had made bets with him but had not paid them. The plaintiff complained to the Turf Protection Society and requested them to report the defendant to Tattersalls'. The society said (by affidavit) that the defendant had agreed to settle the claim, if the plaintiff did not press to have him " posted " at Tattersalls'. The society agreed to refrain for a reasonable time, and wrote to the defendant accordingly. The defendant did not pay and a writ was issued. He did not appear and judgment was given against him. The solicitor thereupon agreed to give him seven days' time to pay. By his affidavit he deposed that he was given one month to appear and to show that he had a defence. The Master disbelieved the defendant, but the judge set aside the judgment and ordered a trial by judge alone without pleadings.

Greer, L.J., said that the judge had a discretion with which the Court of Appeal could not interfere unless he had acted upon a wrong principle of law, e.g., if (as was not the case) he had disapproved of the decision in *Hyams* v. *Stuart King* [1908] 2 K.B. 696. It had been said that the court might set aside a judgment if the defendant had no knowledge of the proceedings and if he had merits. This was the decision in *Watt* v. *Barnett* (1878), 3 Q.B.D. 183, 363 :—

" But if he shows that he had no notice, and that he has a good ground of defence, it is reasonable that he should be let in to defend " : per Jessel, M.R. (at p. 366).

But the power to interfere with discretionary orders, remarks the learned Lord Justice, was not discussed in that case and was not determined until 1927 in the case of *Donald Campbell & Co. Ltd.* v. *Pollak* [1927] A.C. 732. Moreover, there was no consideration to hold over for a week and the defendant got no benefit from the judgment. Greer, L.J., would have dismissed the appeal because the case had never shown that the learned judge acted on wrong principles or irrelevant matters.

The majority of the court, however, took the opposite view, and such is the law, unless and until it is reversed.

Slesser, L.J., read from the defendant's letter, requesting time to pay, as follows :—

" Have never refused to pay him, but have not had any income to do it with owing to bad trade . . .

At the moment I have nothing and no assets and know he does not want to lose his money.

P.S.—Kindly hold over for me and oblige."

The defendant obtained this advantage on the basis that the judgment was valid ; he could not now ask to have it set aside.

" The case is nearer to an estoppel by record rather than as estoppel *in pais*. A party cannot take advantage of an order and then be heard to impeach it." (p. 163).

He cited from *Tinkler* v. *Hilder* (1849), 4 Ex. 187, where it was held that a party who accepts costs under a judge's order cannot afterwards object that the order was made without jurisdiction. Pollock, C.B., there said, (at p. 191) :—

" . . . the party who makes the application to rescind the order, having taken something under that order, must be considered to have adopted it, and cannot now be heard to impeach it."

Even though the point was not taken before the judge that a person could not approbate and reprobate, Slesser, L.J., said that this matter went to the root of the application and should have been taken by the judge himself. This principle of law was not affected by the rule of court giving power to set aside a judgment by default.

Scott, L.J., agreed.

Interest reipublicæ ut sit finis litium was, according to him, the relevant principle. The learned judge should, of his own motion, have refused the application.

" A defendant cannot, in my opinion, be heard to say that he was ignorant of his right, under the Judicature Act and the Rules of the Supreme Court, to apply to set aside the judgment as soon as he knew of it by making an application supported by an affidavit of ' merits.' If he did not know he should have taken advice. If he had consulted a solicitor he would have learnt what his rights were and he cannot put himself in a better position by omitting to take legal advice." (pp. 163, 164.)

There were " three analogous aspects " in which one might regard a defendant against whom judgment was signed in default.

First, he must elect whether to move to set aside or not. If he elects not to move, his right to move has gone. This is like the case of a defendant applying for a stay before " a step in the proceedings," under s. 4 of the Arbitration Act, 1889.

Secondly, he cannot " approbate and reprobate " ; he cannot accept the judgment, and then seek to set it aside.

Thirdly, if he accepts the judgment, he should be estopped from seeking to set it aside.

Scott, L.J., thought that the first case applied here ; the defendant elected to regard the judgment as binding ; it was too late to set it aside. " It was the duty of the judge to take the point, whether it was argued or not."

The view of Scott, L.J., is that which, on consideration, will probably the best commend itself. The cases upon " approbate and reprobate " have dealt with facts where a party secured some legally definable benefit. In the present case, no benefit, in a legal sense, enured to the defendant ; for the promise to hold over for a week was voluntary, being without consideration, as Greer, L.J., pointed out, the defendant already being under a legal liability to pay. Further, can the suggested application of estoppel by record, with respect to Slesser, L.J., be really right ? A plaintiff, after any judgment in his favour, may and probably will, alter his position on the faith of it. It may be that subsequently the defendant appeals with success. An unsuccessful party has a limit of time within which to make up his mind to appeal.

The principle, however, of election, as put by Scott, L.J., is, with respect, the sounder.

Mr. Charles Edward Harvey, retired solicitor, of Dulwich, S.E., left estate of the gross value of £45,713, with net personalty £25,758. He left £75 to the Royal Merchant Seamen's Orphanage, Snaresbrook ; £75 to the Royal Alfred Aged Merchant Seamen's Institution ; £75 to the British and Foreign Bible Society and £75 to the Mariners' Friends Society.

Company Law and Practice.

Underwriting and the Payment of Commission by a Company. —I.

THE section of the 1929 Act that deals with the payment by a company of commission in connection with subscriptions for its shares is s. 43, and it is in the following terms. By sub-s. (1), "it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if—

"(*a*) the payment of the commission is authorised by the articles; and

"(*b*) the commission paid or agreed to be paid does not exceed 10 per cent. of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is the less; and

"(*c*) the amount or rate per cent. of the commission paid or agreed to be paid is—(i) in the case of shares offered to the public for subscription, disclosed in the prospectus; or (ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in the prescribed form signed in like manner as a statement in lieu of prospectus and delivered before the payment of the commission to the registrar of companies for registration, and, where a circular or notice, not being a prospectus, inviting subscription, for the shares is issued, also disclosed in that circular or notice; and

"(*d*) the number of shares which persons have agreed for a commission to subscribe absolutely is disclosed in manner aforesaid."

This is, perhaps, the most important part of s. 43, from the practical point of view; but, before we begin to consider it more carefully, let us call to mind the remaining sub-sections, so that we can put ourselves in a position whence the section as a whole can be seen in proper perspective. It goes on to provide (by sub-s. (2)) that, save as is permitted by sub-s. (1), no company is to apply any of its shares or capital money, either directly or indirectly, in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise. The power of any company "to pay such brokerage as it has heretofore been lawful for a company to pay" is expressly preserved (s. 43 (3)), and it provides also that a vendor to, promoter of, or other person who receives payment in money or shares from, a company is to have and is to be deemed always to have had power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under s. 43 (see sub-s. (4)). And, lastly, by sub-s. (5), default in complying with those provisions of the section that relate to the delivery to the registrar of the statement in the prescribed form carries with it the liability, on the company and every officer of the company, to a fine of a maximum amount of £25.

We should also notice that where a company has paid any sums by way of commission in respect of any shares or debentures, the amount so paid, or so much thereof as has not been written off, must be stated in every balance sheet of the company until the whole of such amount has been written off, and, in the event of default in compliance with this provision the company and every officer of it who is in default becomes liable to a default fine; this is laid down by s. 44.

It has been expressly decided in the case of *Dominion of Canada General Trading and Investment Syndicate* v. *Brigstocke* [1911] 2 K.B. 648 (where s. 89 of the 1908 Act received attention) that private companies as well as public companies fall within that section, which corresponded to our s. 43; and therefore the effect of that decision holds good as regards s. 43. The wide words in s. 43 (2)—"save as aforesaid, no company shall apply . . ."—were the same in s. 89.

To return to sub-s. (1) of s. 43, it is generally considered that the wording of the sub-section is comprehensive enough to include those two different transactions—underwriting and brokerage—whereby a company may become liable to pay commission for agreeing to subscribe conditionally, or agreeing to procure subscriptions, for shares in the company. Brokerage may be described as a commission paid to a person by a company in consideration of his procuring subscriptions for shares in that company, but that person himself, by the agreement, comes under no liability to take up for himself any of those shares that he is not able to place with others: an instance of this is afforded by the case of *Andreæ* v. *Zinc Mines of Great Britain Limited* [1918] 2 K.B. 454. Unlike the practice of underwriting, which was not legally recognised before the 1900 Act, the payment by a company of brokerage enjoys greater antiquity; and in *Metropolitan Coal Consumers' Association* v. *Scrimgeour* [1895] 2 Q.B. 604, the decision of the Court of Appeal was, to quote the headnote to the case, that "the payment by a limited company of a reasonable amount of money" (here it was 2½ per cent. on the nominal value of the shares) "to brokers by way of commission or brokerage for placing shares is not an act *ultra vires* the company." Lopes, L.J., was there very emphatic when he used these words, at p. 609: ". . . in any case where it is made out that the services of the broker are reasonably necessary, that the brokers are properly employed in the issue of the capital of the company, and that the payment of a commission of so much per share is a fair and just payment for services rendered, there is no ground, either of reason, of justice, or of principle, why the payment should not be held to be *intra vires* and unimpeachable." It seems probable that s. 43 (3) is directed to the preservation of this principle, which emerges from the case to which I have just referred: the wording of this sub-section being identical with that of s. 8 (3) of the 1900 Act, by which section the payment of underwriting commission was first recognised.

As regards underwriting transactions, the position before 1900 was briefly that the validity of commission paid by a company to a person for subscribing for or underwriting its share capital was never clearly decided, but the better opinion was that such a payment out of capital could not legally be made. An underwriting agreement was defined by Cotton, L.J., in *In re Licensed Victuallers' Mutual Trading Association: ex parte Audain*, 42 C.D. 1, at p. 6, as an agreement entered into before the shares are brought before the public, that in the event of the public not taking up the whole of them, or the number mentioned in the agreement, the underwriter will, for an agreed commission, take an allotment of such part of the shares as the public has not applied for. The essential difference between this and brokerage is, it will be seen, that the underwriter, unlike the broker, binds himself to take up certain of the shares that are not otherwise subscribed for. Lack of space precludes a minute consideration of the various points of difference, but this summary is sufficient for our present purposes. The history of brokerage and underwriting was discussed recently in *Australian Investment Trust Limited* v. *Strand and Pitt Street Properties Limited* [1932] A.C. 735, where it was decided that a company limited by shares, incorporated under the Companies Acts, 1899–1918, of New South Wales, could not validly contract for the underwriting of an issue of its shares at a commission, as the Acts contain

no provision (as first introduced in England in 1900) authorising the payment of underwriting commissions; and therefore, in effect, the agreement is for the issue of shares at a discount, and is consequently *ultra vires* the company. A useful definition of the word "underwrite," which, in the court's opinion, expressed accurately the meaning of the word in the sense in which it is commonly used, was agreed by the parties in this case, and it is in these terms: "to agree to take up by way of subscription in a new company or new issue a certain number of shares if and so far as not applied for by the public."

One very important condition that has to be observed when use is made of s. 43 is the provision, in sub-s. (1) (*a*) thereof, that the articles of the company must authorise the payment of the commission. In the case of *In re Republic of Bolivia Exploration Syndicate Limited* [1914] 1 Ch. 139, certain payments by the company for commission for obtaining subscriptions for shares were made in reliance on the company's memorandum which authorised it, but the articles contained no such authorisation; and in these circumstances the payments were held illegal. Furthermore, if no amount or rate of commission is specified by the articles, that amount or rate cannot be more than 10 per cent. of the price at which the shares are issued, by reason of s. 43 (1) (*b*), a provision which, incidentally, was not contained in the two, or any, previous Acts; and conversely, if the articles allow payment of an amount or a rate exceeding 10 per cent. of the issue price of the shares, it follows that the amount or rate thereby permitted is invalid to the extent to which it is in excess of 10 per cent. of the issue price of those shares.

Upon reflection, it may seem difficult to reconcile the provisions of s. 43 with those of s. 47, which is the section that for the first time permits the issue by a company of shares at a discount—difficult to reconcile because the payment to an underwriter of commission in consideration of his taking up the shares which the public does not take up, in effect, amounts to the issue of those shares to him at a discount, since he eventually is allotted the shares at a cost to him of less than their issue price, because of the benefit of his commission. What then, it may be asked, is the part played by s. 47, which, with its stringent safeguards, prohibits the issue by a company of shares at a discount (which shares must be of a class already issued) unless (*a*) the company in general meeting authorises, and the court sanctions, the issue at a discount, (*b*) the maximum rate of discount is specified in the resolution, (*c*) the company has been entitled to commence business at least one year before the date of the issue, and (*d*) the issue of the shares in question takes place within one month from the date when the court's sanction was given. The answer is that from the company's point of view the two transactions are not the same, as regards the form in which each is carried out. In an issue of shares at a discount, the company receives from each subscriber the issue price of the shares less the discount; while in an allotment of shares to an underwriter who becomes bound, by the failure of the public, to take them up, the company receives from him the full amount of their issue price, and pays to him separately, as part of its expenses, the amount of his commission. Furthermore, it appears clear from the decision in *Keatinge* v. *Paringa Consolidated Mines Limited* [1902] W.N. 15, that, for a payment to amount to a *bonâ fide* underwriting commission, the mere subscribing for shares and the receiving a commission for doing that alone are insufficient and may well be construed by the court as an issue of the shares at a discount; the payment must be one in the nature of a commission for services rendered in order to avoid that consequence.

Sir Arthur Quiller-Couch and Mr. John Pethybridge, who is a former Town Clerk and Mayor, are to be invited to accept the freedom of the borough of Bodmin, of which they are natives. Mr. Pethybridge was admitted a solicitor in 1883.

A Conveyancer's Diary.

Land Registration: Middlesex.

"Registration of title to land is to be compulsory on sale in the Administrative County of Middlesex on and after the first day of January, nineteen hundred and thirty-seven."

Such is the draft of the Order in Council, made in accordance with s. 120 of the Land Registration Act, 1925 (hereinafter called "the principal Act"). For the form of it, see *Weekly Notes*, 29th February, 1936 (Part II), p. 78.

This is the first proposed extension of its kind of compulsory registration made under the principal Act. The County Borough of Eastbourne became a "compulsory area" on the 1st January, 1926, and the County Borough of Hastings on the 1st January, 1929. But in both these cases the move originated from the local council concerned, in accordance with s. 120 (2) (*a*) of the principal Act. Orders made under s. 120 (2) (*b*), i.e., orders not made at the instance of the county council concerned, could not be made until the expiration of ten years from the commencement of the principal Act. From the 1st January, 1936, this latter method became possible and has been immediately turned to account. From the 1st January, 1937, under the present arrangements, there will be four compulsory areas: the County of London, Eastbourne, Hastings, and the County of Middlesex.

It is not universally realised that ss. 120–122 of the principal Act contain very powerful safeguards against any attempt to hasten unduly the progress of compulsory registration. Section 122, in particular, should be studied by anyone who is at all apprehensive of its advance. We would quote the first and the last two provisions of that section:—

"(i) Notice of every Order proposed to be made shall, not less than six months before the Order is made and not more than eighteen months before the date on which it is to take effect, be given to the council of the county to which such Order is proposed to be applied. A draft of the proposed Order, together with the name of at least one place within or conveniently near to the county where a district registry office is proposed to be established, shall accompany the notice, and shall also be published in the Gazette":

"(xi) Not more than one such Order shall be made within the period of eleven years from the commencement of this Act:

"(xii) The first Order shall not affect more than one county with any county borough surrounded by or contiguous to such county."

In regard to (i), the Land Registration Bill, 1936, excludes the words "and not more than eighteen months before the date on which it is to take effect." For the form of notice in regard to Middlesex, see *Weekly Notes*, 1935, Pt. II, p. 217.

The Land Registration Bill, 1936, also deals with the intended closing of the Middlesex Deeds Registry, resulting from the proposed extension of compulsory registration to Middlesex. We would quote sub-cl. (2) and (3) of cl. 2 of the Bill:—

"(2) It shall not be necessary or permissible to register under the Middlesex Deeds Acts a memorial of any instrument made after the appointed day.

"(3) No memorial of any other instrument shall be registered under the Middlesex Deeds Acts after the expiration of two years beginning on the appointed day, but nothing in this sub-section shall affect the consequences which flow under those Acts from failure to register."

The "appointed day" as defined in sub-cl. (1) means "the day on which registration, under the Land Registration Act, 1925, of title to land becomes compulsory on sale throughout the administrative county of Middlesex." Under the present arrangements that will be the 1st January, 1937. On that day it is intended that "compulsory registration"

shall begin in Middlesex. But it will be an important date for other reasons. The period of eleven years mentioned in s. 122 (xi) of the principal Act will expire then, and, theoretically, at any rate, the process of compulsory registration can be "speeded up." In practice, it is not unlikely that the authorities will adhere to the policy of "hastening slowly." But the order in which compulsory registration will be applied to the counties is already a matter of discussion in legal circles. The 1st of January, 1937, should be a landmark in the history of registration.

We would add one word. Many lawyers appear to have been ignorant, until quite recently, of the proposed extension of compulsory registration to Middlesex. Even now there seems to be considerable misconception as to the details. *Ignorantia juris neminem excusat* is a formidable maxim, but in this case one might find some measure of excuse for the prevailing ignorance. We would respectfully suggest that in the case of future extensions of compulsory registration much more publicity should be given to the proposed extension. Compulsory registration is likely to become so important in the future, that nothing should be left to chance.

Landlord and Tenant Notebook.

Special Provision for Length of Notice to Quit.

THERE is a rule of construction which says that parties entering into a contract contemplate its performance rather than its breach. There is a rule, not of construction, that parties entering into an agreement for a periodic tenancy without skilled assistance but vaguely contemplate its determination. When the habendum has been omitted altogether and the reddendum names a yearly rent, the inference to be drawn has hardened into a rule of law; the tenancy is from year to year determinable by six months' notice expiring with a year of the tenancy. But when some but inadequate attention has been bestowed on the matter, the position becomes more difficult. I think the rules can be fairly gleaned from four of the numerous decisions, two of them cases which occurred at the commencement of the present century and in which county courts were reversed on appeal.

Kemp v. *Derrett* (1813), 3 Camp. 510, is tersely reported. We are told that the plaintiff had let to the defendant part of the "Angel" tavern at Islington, that the tenancy commenced on the 29th October, and provided "that the defendant was always to be subject to quit at three months' notice," but nothing in the report tells us what arrangement there was for rent. Nor is it stated how the plaintiff phrased a notice to quit expiring at Christmas. However, in his judgment Lord Ellenborough held that the holding was from three months to three months, determinable therefore on the 29th January, the 29th April, the 29th July, or the 29th October, and the plaintiff's claim for double value failed accordingly. One gathers either that the rent was fixed by reference to the period of three months, or, if an annual figure were named, the "always subject to quit at three months' notice" negatived any inference of an intention to grant a tenancy from year to year; in other words, that the effect of the "always" was to emphasise the period of the tenancy, but not to create a power to determine it between periods. But one is left wondering what would have been the proper inference if the tenancy had started on a 29th November and the landlord had wished to determine it by a three months' notice expiring with some anniversary of the first quarter, but found that the next year was not a Leap Year?

The next case I propose to cite, *Doe d. King* v. *Grafton* (1852), 18 Q.B. 496, arose out of a properly drawn agreement. The premises, a ground floor plus a room, situated in Chancery-lane, were let to a philosophical instrument maker (I do not know what these instruments are, nor why they should be in demand in Chancery-lane) at a yearly rent of £42, payable quarterly, the first payment to be an apportioned one in respect of the period from the giving of possession till the 24th June; and the agreement provided that the tenant should and might hold until one of the parties should give unto the other six calendar months' notice in writing to quit, at the expiration of which, etc. The landlord, on a 24th June, gave the defendant notice to quit on the 25th December, and the defendant's contention was that he was entitled to a notice expiring either with a year of the tenancy, an anniversary of its commencement, or the 24th June. But in Lord Campbell's judgment, though the reddendum spoke of a yearly rent, the word "yearly" was "only a word of calculation," and the express agreement "until, etc.," meant that no tenancy from year to year was created.

Coming to the present century, we first had *Soames* v. *Nicholson* [1902] 1 K.B. 157, a claim for possession of a public-house. The premises had been let from the 1st May, 1895, at a yearly rent payable by equal payments on the 1st August, the 1st November, etc., and the agreement contained the phrase "subject to three months' notice to quit on either side at any time to terminate this agreement." On a 24th January the plaintiff gave the defendant notice to quit on the 25th April. The county court judge apparently took the view that notice might be a three months' notice, but it must expire on one of the named quarter-days. Lord Alverstone, C.J., said the tenancy was one subject to special provisions, the words "at any time" meant that the parties had stipulated that it might be determined between quarter-days. While his lordship did not refer to either of the two cases mentioned above, his judgment agrees with that in *Doe d. King* v. *Grafton* as regards the effect, or ineffectiveness, of the word "yearly;" but when one puts the decision side by side with *Kemp* v. *Derrett*, one cannot but observe that the distinction between "always" and "at any time" is a fine one. In both cases the tenancies were determinable by three months' notice and the only other peculiarity about *Kemp* v. *Derrett* was that the landlord tried to make a tenancy determine on a "usual" quarter-day, while in *Soames* v. *Nicholson*, both the quarters of the tenancy and the date of the expiry of the notice were unusual. If the one contingency is not to be provided for by "always" but the other is to be covered by "at any time" hair-splitting must be indulged in.

Not long afterwards, a divisional court presided over by the same Lord Chief Justice heard and allowed a landlord's appeal in *Dixon* v. *Bradford and District Railway Servants' Coal Supply Society* [1904] 1 K.B. 444. The claim was for rent. The tenancy agreement provided that the defendants were "to have the tenancy of house and shop . . . at an inclusive rental of £25 per annum from 1st October, 1894. Three months' notice on either side to terminate this agreement." The agreement did not deal with the matter, but rent had in fact been paid quarterly, and it was a quarter's rent that was claimed after the expiration of a three months' "notice," given on 24th September, 1902, that the defendants would cease the tenancy. In his judgment Lord Alverstone observed that these cases were unsatisfactory because one had to apply rules of law to agreements made in colloquial language; here the agreement was *primâ facie* a yearly one; this would be determinable by six months' notice expiring at the end of a year, but special provision had made it three months—without altering the date on which it must expire. One hopes that the defendants had been well advised enough to give a second notice before the 1st July, 1903; in any event the omission of "at any time" from the agreement must have resulted in their paying rent, for property they did not want, for a considerable time.

Our County Court Letter.

THE LIABILITIES OF MARRIED WOMEN.

THE question whether a wife had pledged her own or her husband's credit has been considered in two recent cases. In *Taylor* v. *Bengtsson*, at Ledbury County Court, the claim was for £10 18s. 9d. as the balance of account for goods supplied. The plaintiff's case was that groceries had been supplied to a hotel at Ledbury, of which the defendant's husband had been licensee, although the goods were always booked to the wife. Cheques on account for £10, £5 and £4 had been drawn by her and received by the plaintiff, who continued to supply goods after the defendant had moved to a hotel at Norton. As this was outside the plaintiff's district, the account was eventually closed. The defendant's case was that her husband had gone abroad, since she went to Norton, and she was therefore only liable for the goods supplied to her at that address. She denied that she had separated from her husband, before leaving Ledbury, and she contended that goods delivered there had been ordered by her as her husband's agent. His Honour Judge Roope Reeve, K.C., held that the defendant was the predominant figure, in the Ledbury business, and credit was given to her. She had paid items of the Ledbury account, since moving to Norton, and the liability was not her husband's. Judgment was therefore given for the plaintiff, with costs.

In *Burdon* v. *Andrew and Wife*, at Stockton-on-Tees County Court, the claim was for £9 as instalments due in respect of a piano under a hire-purchase agreement. The husband's case was that the piano had been bought without his knowledge or consent. The wife's case was that she had not bought the piano, as she had signed the agreement (without reading it) under the impression that it had been lent to her, pending the arrival of a smaller model, which she wished to buy. His Honour Judge Richardson held that the husband was not liable for the purchase, without his knowledge, of an article, such as a piano, which was not a necessity. Judgment was given, however, against the wife for the amount claimed, with costs.

ILLEGAL DISTRAINT ON FARM STOCK.

IN a recent case at Stafford County Court (*Nevill* v. *Bellamy and Others*) the claim was for damages for an illegal distraint. The plaintiff was a poultry farmer and had become indebted to a corn merchant (the employer of the defendants) in the sum of £28. Security was offered in the shape of a pair of scales value £18 which the plaintiff was acquiring on the hire-purchase system. He was therefore unable to hand over the scales, but signed an agreement, whereby they were made a security for the debt. In the plaintiff's absence, the defendants subsequently broke open his shed and removed the scales, 125 sacks belonging to another firm of corn dealers, an oil drum, and three poultry houses. The result was that the plaintiff was seriously handicapped in his business, and had only recovered his goods the day before the hearing. The defence was that the plaintiff had sold off his stock, at the end of last season, and was now in the same position as before. The claim was therefore grossly exaggerated. His Honour Judge Ruegg, K.C., observed that the defendants had taken the law into their own hands, and, if the plaintiff had had a good business, he would have been entitled to heavy damages. As the plaintiff's business was not very extensive, judgment was given in his favour for £30 and costs.

THE RESTRICTIVE COVENANTS OF SALESMEN.

IN *Keith Wright, Ltd.* v. *Challis*, recently heard at Huntingdon County Court, the claim was for £24 13s. 9d. as damages, and for an injunction in respect of the breach of a restrictive covenant. The plaintiffs were cheese and butter merchants, and had formerly employed the defendant, who had agreed on leaving their employment not to solicit orders from their customers. The plaintiffs' case was that they had bought another business, but the vendor's wife had then set up a similar business, in which she employed the defendant to solicit orders in breach of his agreement. The defendant's case was that he was now employed as a vanman in another business, the proprietress of which had solicited orders herself. Although he had sometimes accompanied her on her rounds, he had not called for the orders. The latter may have been written in the book by the defendant, but only at the dictation of the proprietress of the business, who was not paying for the defence of the action, as alleged. Corroborative evidence was given to the effect that the defendant had neither taken the orders nor delivered the goods. His Honour Judge Farrant gave judgment for the plaintiffs for £10 as damages, and granted an injunction, with costs.

WALKING POSSESSION.

IN a recent case at Newton Abbot County Court (*Denley* v. *Automatic Salesman Ltd.*) the plaintiff's case was that the defendants, having obtained judgment against Messrs. Mann and Denley, had issued execution on the firm's premises. In the absence of sufficient goods, the defendant then instructed the High Bailiff to levy at the private houses of the parents of the partners. The bailiff reported that, at the house of the plaintiff there were no goods belonging to his son, but the defendants nevertheless insisted upon a levy being made. No goods were removed, but a bailiff went into walking possession, and the worry had caused the plaintiff to lose time from work. Proceedings were commenced against the defendants, and the High Bailiff, but were withdrawn against the latter. His Honour Judge Wethered observed that if the High Bailiff did not levy on the instructions of execution creditors, he was liable to be sued for damages. If the High Bailiff did levy, but on the wrong person, an action for trespass might be brought against him. As there was no justification for the above levy, the plaintiff was entitled to £5 as damages for wrongful seizure and trespass, with costs.

Obituary.

SIR HENRY MILLER.

Sir (Francis) Henry Miller, late Town Clerk and City Solicitor of Londonderry, died on Tuesday, 16th June, at the age of seventy. Sir Henry Miller, who was knighted in 1902, was educated at Foyle College, Londonderry.

MR. C. STANLEY COOMBE.

Mr. C. Stanley Coombe, solicitor, partner in the firm of Messrs. Bramley & Coombe, of Sheffield, died on Tuesday, 16th June, at the age of fifty-six. Mr. Stanley Coombe, who was admitted a solicitor in 1903, was Secretary of the Sheffield Law Society for twenty years, and for one year was Chairman of the Associated Provincial Law Societies.

MR. W. L. J. ORTON.

Mr. William Louis Joseph Orton, solicitor, of Coventry, died on Monday, 8th June, at the age of seventy-five. Mr. Orton was admitted a solicitor in 1883, and at the time of his death was Coventry's senior solicitor.

MR. S. R. RHODES.

Mr. Samuel Robert Rhodes, solicitor, of Wolverhampton, died on Thursday, 11th June, at the age of sixty-nine. Mr. Rhodes, who was admitted a solicitor in 1889, was a member of the Wolverhampton Law Society.

MR. J. TRACY.

Mr. John Tracy, solicitor, of Derry, died on Wednesday, 10th June, at the age of sixty. Mr. Tracy, who was admitted a solicitor in 1899, had been City Coroner for Derry for the past fifteen years.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Validity of Increase of Rent.

Q. 3322. On 1st July, 1935, our client purchased from the personal representatives of F.S. two controlled houses. On looking into the question of the rentals prior to completion the vendors' representatives informed us that "w.c. conversions" had been done by the deceased F.S. in April, 1934, but no notice of increase of rent had been issued, but full particulars and a draft notice of increase was given to us. On 11th July, we issued statutory notice of increase of rent in respect of the conversions, the increased rent to be as from 10th August. The notice was received by the tenants on 12th July. The tenants deny liability for the increase "as the present landlord has not incurred any expense."

(1) We shall be glad to know if we are correct in having advised that the ground for increase is correct, and any quoted cases. We based our opinion on the meaning of "landlord" in the Act.

(2) Whether the length of notice is correct. It should be stated that it is impossible to say what tenancy is held apart from the Act as the rent has been paid in many different ways. At present it is paid half-yearly on 1st January and 1st July. The contractual tenancy would, however, appear to have been terminated in 1923 by statutory notice to quit and increase of rent.

A. (1) The questioners' advice was correct. There is no substance in the tenant's objection, as the present landlord doubtless paid a higher price, by reason of the conversions carried out by the deceased.

(2) The length of notice was four clear weeks, in accordance with the statutory form (which was presumably followed) and was therefore correct.

Liability for Fallen Chimney.

Q. 3323. A and B are the owners of adjoining houses. A has certain roof repairs done to his house in 1928, and in the course of these repairs it was discovered that B's part of the chimney stack is in a very bad state of repair. A completes his own repairs, and writes B a letter in 1928 informing him of the dangerous state of his part of the stack, and that if any damage is caused to A's house he will hold B responsible. B does not take any notice of this letter, but sells his house in 1932 to C without informing C of A's complaint about the chimney stack. In a recent storm the chimney stack is blown down and causes considerable damage to A's house. Can A successfully claim the cost of repairing his house from C? C has repudiated liability, and states he will counterclaim for damages in respect of a portion of A's part of the stack which caused damage to his (C's) house. A contends that no part of his chimney stack would have given way if it had not been for the additional strain caused by the lack of repair of C's part.

A. As the chimney stack was common to both houses, and apparently damaged both houses in its fall, A will have difficulty in recovering the cost of repairing his house from C. A knew of the defect in 1932, but took no steps to notify C, who might have been more reasonable than B, if given the opportunity of repairing his own half of the chimney. As A allowed three years to pass without notifying C of the state of his half of the chimney, it appears that any negligence was on A's side. There is apparently no evidence of negligence against C, as he was not warned by B on purchasing the property. A's contention that the stack gave way owing to the strain caused by neglect on C's side is too problematical to establish. The question is therefore answered in the negative.

Powers of a Managing Director.

Q. 3324. X Limited, is a company limited by shares under the Companies Act, 1929. The articles provide that the number of members of the company shall not at any time exceed fifty. The shares of the capital of the company may be allotted to such persons and upon such terms and conditions as the directors may determine. The company are debarred from offering shares or debentures to the public for subscription. The directors of the company are two only, A and B, who respectively hold office for life, with power to appoint by will any person to be a director in their place. In actual fact A and B hold all the shares equally, but A is the chairman and sole managing director. There is no service agreement between A and the company, although the articles provide that A shall hold his office as provided in an agreement between him and the company. B now complains that contracts are entered into and servants employed by A without B's concurrence and that before these engagements are entered into no meeting of the directors is called. (1) Are not such acts as employing servants and entering into everyday contracts, even in the absence of a service agreement, acts which can properly be performed by a managing director on his own initiative without formal authority from the other directors? (2) In any case for all practical purposes is not B in a practically helpless position having regard to the fact that A would at any directors' meeting as chairman have a casting vote, and thus any opposition by B would be useless?

A. (1) The articles apparently do not specifically provide for a managing director, and the status of such a director is not defined in the Companies Act, 1929. Nevertheless, the existence of managing directors is recognised in Art. 68 of Table A, and also in decisions of the courts on company law. Their implied powers include the acts set out in the first query, which is accordingly answered in the affirmative. (2) This query is also answered in the affirmative. The only matter giving rise to any legal remedy would be conduct by A constituting a fraud upon the rights of B. The latter could then apply to the court for a declaration that a resolution overruling his objection was void, and for an injunction restraining the company from acting in pursuance of the resolution.

Mortgage of part of a Property covered by one set of Deeds —Custody of Deeds—Puisne Mortgage—Registration—Severance before Mortgage.

Q. 3325. Clients of ours own a piece of land (about 3 acres) and certain buildings thereon. It is proposed that a further building be erected upon about one sixth part of this land and that this should be mortgaged to a building society. The building society stipulate either that the conveyance of the whole site of the 3 acres should be handed over or there must be a conveyance of the one-sixth of the land from our clients to themselves so that such latter conveyance can be handed over, and point out that under the Law of Property Act, 1925, s. 72 (3), such a conveyance is possible. The building society decline to accept a title by way of a memorandum of the mortgage on the conveyance of the main site, coupled with a registration of a charge in the Land Registry. Could you

please let us know if there is a precedent of a conveyance under the above section in any of the precedent books, as we have been unable to trace it?

A. We regret that we are not aware of such a precedent. Further, we are disposed to doubt whether one is likely to be available, seeing that the society (making the usual searches) would be safe in accepting a puisne mortgage duly registered, provided it was satisfied that no mortgage or charge involving the deposit of the deeds had been previously executed. As a form of conveyance we suggest vesting the property in the present owners upon trust for sale, with power to postpone sale, and to stand possessed of the net proceeds and rents and profits pending sale upon trust for themselves in accordance with their present equitable interests. A power should be added to deal with the property for purposes of management, leasing or mortgage, and generally as fully and effectually as if they were absolute owners, including (but without prejudice to the generality of the powers thereby conferred) power to raise £*x* by way of mortgage or legal charge from the N. Building Society upon such terms, etc., etc., as they may approve. The stamp will be but 10s., seeing that no interest, legal or equitable, is alienated.

Solvent Estate—Order of Administration.

Q. 3326. A testatrix, who died on the 16th September, 1935, by her will, dated the 27th July, 1934, after appointing two executors and directing payment of all her just debts, funeral and testamentary expenses, bequeathed unto her niece, her nephew and her brother, all money in the Post Office savings bank, all money in Lloyds Bank Limited, and all money in certificates to be shared equally between them. It is assumed that by the reference to certificates the testatrix meant saving certificates. The testatrix also bequeathed all money in the house at her death to her niece, and she also bequeathed all her furniture and household effects and everything in the house between her two nieces, except a sideboard, which she left to her nephew. The testatrix also specifically devised her house, in which she lived, to a stranger-in-blood. The house is of freehold tenure. The testatrix left no residuary estate and consequently there is no estate to pay the debts, funeral, testamentary and administration expenses. In view of the foregoing facts, in what manner should the estate be distributed? Should the bequests of the legacies and the bequest of the household furniture and effects and the specific devise of the real estate abate in proportion to their value, or should the legacies or the household furniture and effects, both or either of them, abate accordingly, and the real estate not abate?

A. The whole of the estate appears to be specifically devised or bequeathed. Accordingly, under Ad. of E.A., 1925, s. 34 (3), and the 1st Sched., Pt. II, to that Act, para. 8 (*b*), the real estate will bear its own estate duty (a testamentary expense, *Re Pullen* [1910] 60; *O'Grady* v. *Wilmot* [1916] 2 A.C. 231, and Ad. of E.A., 1925, ss. 1 to 3), while under para. 6 of that part of that schedule the whole of the property specifically disposed of will be liable for the debts, funeral and (remaining) testamentary expenses rateable according to value.

Pre-1926 Trust to Sell or Retain Realty—Effect.

Q. 3327. A, by her will dated 16th August, 1912, appointed B and C executors and trustees and bequeathed the residue of her estate in the following words: "All the rest, residue and remainder of my estate both real and personal of whatever kind and wheresoever situate (hereinafter called "my residuary estate") I give, devise and bequeath unto my trustees Upon Trust to hold the same in the state of investment in which the same may be at the date of my decease without being answerable for any loss occasioned thereby *or* at *their discretion* to *sell the same* and after payment thereout of all my debts, funeral and testamentary expenses and death duties to invest the proceeds of such sale in some one or more of the modes of investment hereinafter mentioned with power from time to time to vary any investment In trust to pay the income thereof to D for life and after her decease to stand possessed of my residuary estate in trust for the children of the said D in such shares as she should by Deed or will appoint." The said residuary estate included some freehold properties. A died in 1918 and her will was proved in 1918. The executors and trustees have retained the said residuary estate in its state as at death of A and applied the income thereof to D. D has now died intestate and the question arises, is the land settled land or not? And who are the proper persons to vest the properties in the persons now absolutely entitled under the will of A?

A. The L.P.A., 1925, s. 25 (4), is not in point, seeing that the testatrix died before 1926. As the testatrix seems to have had in mind the possibility of the property passing in specie under the will after the death of D, there was thus (in our opinion) no immediate binding trust for sale but a settlement: see *Re White, Pitman* v. *White* [1930] 1 Ch. 179. On this basis, D took the legal estate on 1st January, 1926, under L.P.A., 1925, s. 39, and Sched. I, Pt. II, paras. 3 and 6 (c). As the settlement ends with the death of D the legal estate has vested in her (general) personal representatives (*Re Bridgett* and *Hayes Contract* [1928] Ch. 163), and it will be for them to give effect to the provisions of L.P.A., 1925, s. 34 (3): see also S.L.A., 1925, s. 36. It could, of course, readily be arranged with the consent and concurrence of the persons entitled to an assent upon the statutory trusts to vest the property in the beneficiaries (if less in number than five) upon the trusts desired, presumably trusts equivalent to the statutory trusts.

Recovery of Debts by Totalisator Company.

Q. 3328. A is a totalisator company suing B for amounts from time to time invested on his instructions on the tote which he failed to pay on losing. Can the company recover from B the amount so lost, or is the transaction void under the different Gaming and Betting Acts?

A. A can recover the amounts if it carries on its business on a credit basis, but not if it does so on a cash basis: see *Streatham Cinema Limited* v. *John McLauchlan* [1933] 2 K.B., at p. 336.

Voluntary Conveyance subject to a Mortgage—Obligations of Donor under the Mortgage in effect reduced—Whether the words "Beneficial Owner" in relation to the Grant imported the appropriate four covenants for title.

Q. 3329. By a recent conveyance between grantor (1), mortgagee (2), donee (3), grantor (4), after reciting seisin of grantor subject to a mortgage, state of mortgage debt, and grantor's desire to make provision for donee by conveying the property thereinafter described to the donee in fee simple subject to the said mortgage debt, it was witnessed that for effectuating the said desire and in consideration of his natural love and affection for donee and also in consideration of donee and grantor taking upon themselves the liability in respect of the said mortgage debt the grantor, as beneficial owner, conveyed certain property to the donee in fee simple free from any resulting trust in favour of the grantor, but subject to the mortgage debt. The conveyance contained a joint and several covenant by the donee and grantor with the mortgagee to repay the mortgage debt and the following clause: "It is hereby declared and agreed between the mortgagee the donee and the grantor that the giving of time to the donee or the neglect or forbearance of the mortgagee in requiring or enforcing payment of the moneys hereby secured or any other variation of these presents or other dealing between the donee and the mortgagee shall not in any way prejudice or affect this security or the joint and several covenants of the donee and the grantor hereinbefore contained

or the continuing liability of the donee and the grantor by virtue thereof and although as between the donee and the grantor the grantor is only a surety for the donee yet as between the grantor and the mortgagee the grantor is to be considered a principal debtor for all moneys intended to be hereby secured." The value of the property exceeded the amount of the mortgage debt. In the circumstances do the words "beneficial owner" imply the covenants for title specified in s. 76 of the L.P.A., 1925 ?

A. We think that the covenants were in this case implied. The grantor obtained some benefit from the conveyance in that his obligations under the mortgage were, in fact, modified and *reduced*, and this was a valuable consideration.

Town Planning.

Q. 3330. (1) My clients, who are owners of licensed premises, find that their property is in an area zoned for industrial purposes. What exactly does this include, as there appears to be no definition in the Town Planning Acts ? They have been informed by the local town planning authority that this permits business premises and/or residential premises being erected thereon. Is this correct ?

(2) Clients of mine have certain premises which have always been used for residential purposes, and are now zoned as such by the local town planning authority. They have now received an offer from would-be lessees to rent the premises for business purposes at double the rent obtainable for residential purposes. In the event of their application to the local authority for re-zoning, or an interim development order being refused, would they be entitled to any compensation, and, if so, upon what basis ?

A. (1) Zoning is the term applied to the reservation of areas for certain purposes in preliminary statements and schemes. The latter are used as a basis for the guidance of development, pending the settlement of the full schemes. Zoning does not imply the exclusive reservation of an area for one purpose, and the local town planning authority are therefore correct in saying that business and/or residential premises may be erected in the area zoned for industrial purposes.

(2) No compensation would be payable in the circumstances mentioned. Both parties appear to have notice that the contract may be avoided, by impossibility of performance, and must be presumed to have contracted on that basis.

Deposit in Friendly Societies.

Q. 3331. We are acting for a friendly society who have taken advantage of s. 46 of the Friendly Societies Act, and formed a loan fund. The rule authorising the formation of the loan fund contains the following words : " and the amount received on deposit shall be a first charge on its funds and assets." As there is a possibility of the society having to dissolve through inability to discharge its liabilities, a question has arisen as to whether this rule gives the loan creditors any priority over the ordinary creditors. We have taken the view that these rules can only operate to regulate the position of the members between themselves, and that the loan creditors consequently rank equally with the ordinary creditors of the society. If they get any priority by virtue of this rule, it can only operate to give them a priority against the subscribing members and after the ordinary creditors have been paid in full.

A. The questioners are correct in their view that the rules are only applicable as between the members themselves, i.e., the rules cannot operate to postpone or limit the rights and remedies of the ordinary creditors. Any priority is therefore only against the subscribing members, as suggested in the question. The expression " funds and assets " in the rule means the net amount remaining after the ordinary creditors have been paid. There is nothing in the Friendly Societies Act creating a secured creditor, analogous to the debenture holder in company law.

To-day and Yesterday.

LEGAL CALENDAR.

15 JUNE.—" The boroughmongers are defeated . . . The speedy and final triumph of Reform is certain ! ! ! Let all Dundee be illuminated on the night of Monday first from seven till nine o'clock." Thus was the second reading of the Reform Bill announced in Dundee, and the mob carried out the exhortation to illuminate with such a will that a police station was burned down. They also tried hard to set the Town House on fire. On the 15th June, 1831, the chief rioters were tried in the High Court of Justiciary. The worst of them were transported for fourteen years. Minor participators got short terms of imprisonment.

16 JUNE.—On the 16th June, 1879, Charles Bowen was appointed a Justice of the Queen's Bench Division of the High Court.

17 JUNE.—On the 17th June, 1862, Mr. Justice Fitzgerald and Mr. Baron Deasy opened the Commission at Limerick. Ireland was then in the midst of an orgy of assassinations so violent that civil society seemed to be breaking up. The first case to be tried at Limerick was one of the worst crimes of all. Francis FitzGerald, a country gentleman in the prime of life, had been attacked and shot dead while out walking with his young wife to whom he had been married only a few months before. The men were hired assassins carrying out the deliberate order of a secret tribunal, yet Beckham, the accused, on trial had the look of a respectable farmer. Identified beyond doubt by the widow, he was convicted and hanged.

18 JUNE.—On the 18th June, 1859, Lord Campell received the Great Seal as Chancellor. For nine years he had filled the office of Chief Justice of the Queen's Bench with ease and ability, and everyone was astonished that at an advanced age (he was well over seventy) he should exchange the security of his familiar court for a precarious honour involving work of which he had no experience. However, in the two years during which he sat in Chancery, he made himself a competent equity judge, mastering new forms with astonishing rapidity.

19 JUNE.—On Friday, the 19th June, 1778, Lord Chancellor Thurlow " went in state from his house in Great Ormond Street to Westminster Hall, accompanied by the Judges, Serjeants, etc., where in their presence he took the oaths of allegiance and supremacy and the oath of the Lord Chancellor of Great Britain, the Master of the Rolls holding the book and the Deputy Clerk of the Crown reading the said oaths. Which being done, the Solicitor General moved that it might be recorded and it was ordered accordingly."

20 JUNE.—On the 20th June, 1840, Lord William Russell's Swiss valet, François Courvoisier, was sentenced to death by Lord Chief Justice Tindal for the murder of his master whom he had killed in his bed, cutting his throat. The crime was sensational, but even more sensational was the dilemma in which the prisoner placed his counsel, Charles Phillips, by confessing his guilt to him in the course of the trial. He consulted Mr. Baron Parke, one of the judges, as to where his duty lay, and was told that he must go on with the defence and use all fair arguments arising on the evidence.

21 JUNE.—On the 21st June, 1814, Lord Cochrane, one of the naval heroes of the Napoleonic wars, was sentenced to be fined £1,000, to stand in the pillory for one hour and to be imprisoned for twelve months, having been wrongfully convicted of conspiring to spread false rumours and defraud. A rumour that Napoleon had been killed had sent up stocks to the immense profit of holders. The Stock

Exchange had investigated and this was the result. Cochrane was never placed in the pillory, for his friends stood by him, but his merited reinstatement did not come for eighteen years.

THE WEEK'S PERSONALITY.

By the time he was appointed to the Bench, Charles Bowen was already a sick and tired man, though he was but forty-four. In the autumn of 1878, he had been forced to retire for a time from work and to seek recuperation in a protracted tour which took him to Stockholm, St. Petersburg, Moscow, Kiev and Constantinople. On his return, he was offered a judgeship in the Queen's Bench Division, which he accepted with reluctance and only because of his failing health, for more active ambitions had been his and it was with regret that he abandoned the excitement of advocacy. Moreover, his rare and subtle mind was far from being able to adapt itself with ease to the necessity of dealing with common jurymen. On the other hand, he had scant regard for legal technicalities. It was said of him: "Lord Bowen, in his anxiety that justice should be done, was indulgent—some of his colleagues thought over-indulgent—to slips of practice and mistakes. He would never let a client suffer, if he could help it, from the ignorance or carelessness of his advisers, or even his own obstinacy." Lord Justice Fry said of him: "In the moral qualities which befit a judge he was, I think, perfect."

THE DEBTOR AND THE TOMBSTONE.

A Newfoundland merchant was recently ordered to pay £2 damages for "illegal detention of a tombstone." A man who owed him a small debt had failed to pay it, using the money to buy a memorial stone for his wife's grave. Thereupon the merchant had seized the stone, refusing to give it back till the debt was paid. Had such a right existed in law one may infer from Judge Parry's recorded experiences as a county court judge in Manchester that it would often have been invoked in that district. There, one gathers, the widows of men whose death had brought workmen's compensation money almost always asked for substantial advances to put up costly and unnecessary tombstones. The judge invariably tried to postpone the drawing out of the money as long as possible, sometimes with good results. One woman had been particularly grieved at a year's delay, and when she came back Judge Parry said to her: "I do hope you have thought over all I said to you last time about the tombstone. I think there are many better ways of showing respect." "Yes, sir, so do I," she faltered. "I'm very glad," said the judge. "So am I," she blushed. "You see, I'm going to be married again."

CHILDREN IN COURT.

A recent case at Dorchester, in the course of which two children of a woman on trial for murder were brought into court to give evidence, has provoked some suggestions that means should be found of taking such evidence otherwise than in open court. It is certainly true that evidence of that sort tends to be harrowing, as in that scene at the Chelmsford Assizes where Mellor, J., was trying a farm labourer for the murder of his little child. The only witness of the crime was her sister, aged ten, and just after she was sworn a hoarse voice was heard from the dock: "Speak the truth, Annie! Speak the truth!" She did speak the truth, and on her evidence her father was found guilty, sentenced and hanged. But, in spite of a natural wish not to multiply such scenes, it is hard to see how they could be avoided, if juries are to judge the important point of the demeanour of a child witness. A coached child who had learnt a story by heart might not always in a private cross-examination be so obviously discredited as the little girl who, having told an excellent story, was demolished by being asked by the opposing counsel to repeat it. She did. She was word perfect!

Notes of Cases.

House of Lords.

Commissioners of Inland Revenue *v.* Crossman and Others; Same *v.* Mann and Others.

The Lord Chancellor, Lord Blanesburgh, Lord Russell of Killowen, Lord Macmillan and Lord Roche.
27th March, 1936.

REVENUE—ESTATE DUTY—ORDINARY SHARES—RESTRICTIONS ON SALE—METHOD OF VALUING SHARES—FINANCE ACT, 1894 (57 & 58 Vict., c. 30), s. 7 (5).

Appeals by the Commissioners of Inland Revenue against two orders of the Court of Appeal, dated 27th July, 1934, allowing by a majority (the Master of the Rolls (Lord Hanworth) dissenting) appeals by the present respondents, the executors of the late Percy Crossman, and the executors of the late Sir W. T. Paulin, against orders of Finlay, J., dated 21st December, 1933, and made on petitions presented by the respondents pursuant to s. 10 of the Finance Act, 1894, against decisions of the Inland Revenue Commissioners fixing the value for estate duty, on the respective deaths of Crossman and Paulin of the ordinary shares held by them in a company called Mann, Crossman and Paulin Limited.

The appeals raised the question how ordinary shares of the company should be valued for estate duty purposes, under s. 7 (5) of the Finance Act, 1894 (which provided that the principal value of any property was to be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased), having regard to provisions in the company's articles of association whereby no holder of ordinary shares might transfer them without first offering them—and the personal representatives of any deceased holder of ordinary shares were bound to offer them—for sale to the holders of the remaining ordinary shares of the company at a price prescribed in accordance with the articles. Finlay, J., held, on the authority of *Attorney-General* v. *Jameson* [1905] 2 Ir. 218, and *Salvesen's Trustees* v. *Inland Revenue Commissioners* (1930), Sc. L.T. 387, that the value of the shares was not to be fixed at the prices at which, under the articles, the shares could be bought by existing members of the company, but at the price which they would fetch if sold in the open market on the terms that the purchaser would be entitled to be registered as a holder of the shares and hold them subject to provisions in the articles of association. He fixed the value of Paulin's shares at £355 a share, and of Crossman's at £351 a share.

LORD HAILSHAM, L.C., said that in order to reach the right conclusion on the construction to be placed on s. 7 (5) of the Act of 1894 and its application to the facts of the present case, it seemed to him essential to determine what was the property which had to be valued. In his opinion, the property which passed at the death of the deceased consisted of the shares in the company, and that was not the less true because the terms of the articles limited the rights of the deceased shareholder or of his executors to deal with the shares, and gave certain privileges and rights of pre-emption on his death. In view of the restriction in the articles it was necessary, in order to comply with the provisions of s. 7 (5) of the Act of 1894, either to assume a sale of the shares in the open market, or else to limit the property to be valued to that which could be sold in the open market. The latter was the alternative which the Court of Appeal had preferred. It seemed to him (the Lord Chancellor) that that construction involved treating the provisions of s. 7 (5) as if their effect were to make the existence of an open market a condition of liability instead of merely to prescribe the open market price as the measure of value. The right to receive the price fixed by the articles in the event of a sale to existing shareholders was only one of the elements which went to make up the value of the shares.

In addition to that right, the ownership of the share gave a number of other valuable rights to the holder, all of which went to make up a share and form ingredients in its value. But the purpose of s. 7 (5) was not to define the property in respect of which estate duty was to be levied, but merely to afford a method of ascertaining its value. If the view of the Court of Appeal were correct, it would follow that any property which could not be sold in the open market would escape death duty altogether. That seemed to him quite an unnecessary and unnatural construction to place on the language of the statute. On the other hand, he could see no difficulty in treating the sub-section as meaning that the Commissioners of Inland Revenue were to assume that the property which was to be valued was being sold in the open market, and to fix its value for estate duty purposes on that hypothesis. For those reasons, he thought that *Jameson's Case, supra*, and *Salvesen's Case, supra*, had been rightly decided, and that the appeal must be allowed.

Lord Blanesburgh and Lord Roche gave judgment allowing the appeals.

Lord Russell of Killowen and Lord Macmillan were of opinion that the appeals should be dismissed.

Counsel: *The Attorney-General* (Sir Thomas Inskip, K.C.), *the Solicitor General* (Sir Donald Somervell, K.C.) (at the time of the appeal), and *J. H. Stamp*, for the Crown; *Gavin Simonds*, K.C., *Cyril Radcliffe*, K.C., and *D. Ll. Jenkins*, for the respondents.

Solicitors: *The Solicitor of Inland Revenue; Crossman, Block & Co.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Fletcher's Settlement Trusts: Medley *v.* Fletcher.

Clauson, J. 1st, 4th and 5th May, 1936.

Will—Legacy to Satisfy Statute-barred Debt—Whether Bounty—Creditor's Second Claim Ignored by Will—Whether put to his Election.

In 1884, on the occasion of his first marriage, the testator entered into a marriage settlement covenanting (1) to effect a policy of insurance in the names of the trustees upon his own life for £2,000; (2) by his will to bequeath to the trustees all his interest in every copyright to which he was entitled. In fact, he never took out the policy covenanted. By his will, made in 1927, he bequeathed £2,000 to the trustees of the settlement in full satisfaction of all the obligations arising out of the covenant to effect the policy of insurance. He did not leave his copyrights to the trustees, but he left all his property in the events which happened by way of general residuary bequest to his widow, his second wife. The question arose whether the surviving trustee was put to his election between claiming under the settlement in respect of the copyrights or claiming an interest in the £2,000 legacy.

Clauson, J., in giving judgment, said that if the trustee claimed under the will, he would receive a legacy in satisfaction of a debt which was statute-barred. The executors were free until stopped by an administration order to meet liabilities which were statute-barred. The question was whether the trustee could claim the legacy, and also claim to have the copyrights assigned to them, though the testator by his will was treating them as his own property, disregarding his obligations under the settlement. A person claiming under a will was put to election to give effect to the will as a whole, if what he claimed was bounty. It had been argued that giving a legacy in discharge of a statute-barred debt was not bounty, but that view could not be upheld. The trustee must elect.

Counsel: *W. M. Hunt; J. A. Reid; J. F. Bowyer; George Slade.*

Solicitors: *Field, Roscoe & Co.; Thomas Cooper & Co.; Blyth, Dutton, Hartley & Blyth.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

In re Crocker.

Clauson, J. 27th May, 1936.

Solicitors—Acting for Insured Motorist—Selected by Insurance Company—Judgment Against Assured—Solicitors' Duty to Produce Documents at his Request—Solicitors Act, 1932 (22 & 23 Geo. 5, c. 37).

A motorist insured against accidents in the usual form was involved in a collision with a lorry while carrying a passenger, both himself and the passenger being injured. The lorry driver was subsequently convicted of dangerous driving, and in an action for damages against the lorry owners the motorist recovered £100. Later, the passenger brought an action against the lorry owners and the motorist, alleging negligence by both. The defendants' case was conducted entirely by their respective insurance companies and the plaintiff finally recovered judgment for £924 damages on admissions of negligence by both defendants. The motorist said that he never gave the company authority to admit negligence by him and that the accident was entirely due to the lorry driver's negligence and applied to the solicitors who acted for the defendants to produce or allow him to inspect all the relevant documents in the action. The solicitors refused on the ground that they belonged to the insurance company.

Clauson, J., in giving judgment, said that the motorist retained these solicitors who acted for him in the action. He now applied to have access to the papers and the court had jurisdiction to make the order sought either under the Solicitors Act, 1932, or under its general jurisdiction. It was argued, however, that the order should not be made here, the insurance policy which idemnified the applicant against all costs having given the company absolute conduct and control of all proceedings taken by or against him in respect of the risks insured against. But the solicitors, though selected by the company, were the solicitors of the applicant. It was argued, however, that the clause giving the company control entitled them to direct the solicitors not to give effect to the client's wishes. In view of their obligations under the policy, the company had an interest in the documents and should not be ordered to deliver them up. But they should produce at their office at any reasonable time for inspection by the motorist and his solicitors all documents relating to the action.

Counsel: *Morton*, K.C., and *G. Gardiner*; *Samuels*, K.C., and *J. Strangman.*

Solicitors: *Metcalfe, Copeman & Pettefar*; *Linklaters & Paines.*

[Reported by Francis H. Cowper, Esq., Barrister-at-Law.]

In re Ward's Will Trusts: Ringland *v.* Ward.

Clauson, J. 29th May, 1936.

Company—Surplus Moneys Arising from Realisation of Capital Assets—Will Trusts—Whether Amount Received Capital or Income.

A testator, who died in 1928, held shares in a certain company which by his will, made in 1925, he directed his trustees not to sell during the continuance of the trust, but to hold on trust to pay the dividends, interest and annual income to arise therefrom to his wife for life, and subject thereto to his children for life with remainder to their issue. By Art. 67A, adopted in 1919, the company had power to resolve that any surplus moneys arising from the realisation of any capital assets of the company or any investments representing them might be distributed among the members "on the footing that they receive the same as capital," such surplus moneys or investments meaning moneys or investments over and above the total of the liabilities and paid up share capital for the time being. In 1934, it was resolved that part of the surplus money in the hands of the company representing moneys arising from

the sale of certain capital assets and then standing to the credit of the capital reserve account should be distributed among the members in accordance with the article. The trustees of the will having received £16,000 the question arose whether it was income payable to the tenant for life or capital.

CLAUSON, J., in giving judgment, said that the money was neither dividend nor interest nor annual income. The testator must be taken to have known that there might be a distribution under the powers of the article. His lordship referred to *Commissioners of Inland Revenue* v. *Blott* [1921] 2 A.C., at p. 219, and *Hill* v. *Permanent Trustee Co. of New South Wales* [1930] A.C. 720. This was capital money.

COUNSEL: *C. M. White; W. M. Hunt; G. Upjohn; A. Nesbitt: Hon. Denys Buckley.*

SOLICITORS: *Boxall & Boxall*, agents for *Edwin Boxall & Kempe*, of Brighton.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Boag *v.* Standard Marine Insurance Co. Ltd.

Branson, J. 16th, 17th and 31st March, 1936.

INSURANCE (MARINE)—CARGO—EXCESS VALUE POLICY—TOTAL LOSS—CLAIMS PAID BY INSURERS AND INCREASED VALUE UNDERWRITERS—GENERAL AVERAGE ADJUSTMENT—SUM RECEIVABLE BY CARGO OWNERS—WHETHER INCREASED VALUE UNDERWRITERS ENTITLED TO PROPORTION OF—MARINE INSURANCE ACT, 1906 (6 Edw. 7, c. 41), s. 79.

Interpleader issue.

A company, by a policy dated the 19th September, 1934, insured cargo, of which they were owners, with the defendant company. The cargo consisted of Italian wheaten sharps. Its c.i.f. invoice value was £636, but, owing to an advance in the price of wheaten sharps, it had, at the intended port of discharge, a nett value of £890. The cargo owners also insured the cargo with a syndicate of underwriters at Lloyds, of whom the plaintiff was a representative, by declarations made on the 28th September, 1934, against a floating increased value policy for £5,000. The cargo was shipped at Naples on the 17th September. During the voyage the cargo had to be jettisoned, and was lost. In October, the cargo owners claimed in respect of the loss against the defendants, who paid the claim on the 5th November, the cargo owners handing them a letter of subrogation. The cargo owners also claimed against the increased value underwriters who paid the claim in December, the cargo owners handing them a letter of subrogation. A general average adjustment having been prepared in June, 1935, the balance receivable by the cargo owners was £532, which sum was in the hands of the shipowners and the adjusters as trustees. The defendants claimed to be entitled under s. 79 of the Marine Insurance Act, 1906, to the whole of the £532, under their subrogation rights. The plaintiff claimed to be entitled to £127 of that sum as representing the proportion of the general average allowance applicable to the increased value policy. He also claimed under his rights of subrogation. The defendants did not know of the existence of the increased value policy until after they had paid on the total loss. *Cur adv. vult.*

BRANSON, J., said that the dispute was one between the company and their insured, and the company would clearly be entitled to succeed on the decision of *North of England Iron Steamship Insurance Association* v. *Armstrong* (1870), L.R. 5, Q.B. 244, followed in *Thames and Mersey Marine Insurance Co. Ltd.* v. *British and Chilian Steamship Co. Ltd.* [1915] 2 K.B. 214. The question, therefore, was whether the increased value underwriters could have any greater rights against the defendants than their assured had. It was said for the plaintiff that, just as the right of contribution between insurers, who had separately issued policies covering the same nsured in respect of the same adventure and interest, arose independently of any contract between them, so there was a correlative right in each insurer to subrogation which was unaffected by any contract between any insurer and the insured. No authority was to be found for that proposition in the case where the original policy was a valued policy, but it was based on the analogy of the position created by over insurance by double insurance. He (his lordship) thought the suggested analogy failed in a case like the present. No right of contribution arose as between the company and the underwriters which could form the basis of any right to share in the salvage. It was also contended for the plaintiff that, as soon as a contract of insurance was entered into, there arose a right to subrogation in the event of a total loss being paid, that that right was inchoate until the loss was paid, so that, where successive policies had been effected, each policy gave rise to an inchoate right, all of which rights crystallized as from the time of the casualty, and so were all valid. That contention was unsound. It depended on the theory that subrogation arose by operation of law and independently of anything done between the parties. Section 79 of the Act of 1906 showed that subrogation was not effected as a matter of course. If it were, an insurer, having paid a total loss, could sue in respect of the subject-matter in his own name, which had never been allowed. There was no evidence to justify implying a condition in the original policy that the insured should be at liberty to take out an excess value policy. In his (his lordship's) opinion, the plaintiff had failed to show that the increased value underwriters were entitled to any part of the £532.

COUNSEL: *C. T. Miller*, for the plaintiff; *W. L. McNair*, for the defendants.

SOLICITORS: *Botterell & Roche*, agents for *Weightman, Pedder & Co.*, Liverpool; *Ince, Roscoe, Wilson & Glover.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Governors of Queen Anne's Bounty *v.* Pitt-Rivers.

Talbot and Atkinson, JJ. 6th April, 1936.

TITHE RENT-CHARGE—RECOVERY—APPLICATION TO COUNTY COURT FOR APPOINTMENT OF RECEIVER—APPEARANCE OF LANDOWNER WITHOUT FILING NOTICE OF OPPOSITION—RIGHT TO BE HEARD—RULES REQUIRING NOTICE—WHETHER *ultra vires*—TITHE ACT, 1891 (54 & 55 Vict, c. 8), s. 2 (1)—TITHE RENT-CHARGE RECOVERY RULES, 1891–1933, rr. 5 and 8.

Appeal from an order of Porter, J., sitting in Chambers.

In December, 1935, the Governors of Queen Anne's Bounty, as tithe-owners, applied to the Shaftesbury County Court for the appointment of a receiver for the recovery of arrears of tithe from the appellant, Pitt-Rivers, a landowner. The appellant appeared before the court in person and demanded to be heard in opposition to the application, although he had not filed any notice of opposition as required by r. 5 of the Tithe Rent-charge Recovery Rules, 1891–1933. By r. 8, where no notice of opposition is given, the facts stated in the notice of application are to be deemed to be admitted, and the court may make an order for the recovery of the amount claimed. By s. 2 (1) of the Tithe Act, 1891, where tithe is in arrear for not less than three months, and on application to the county court, the court, after hearing the landowner, "if he appears and desires to be heard," may order that the sum due be recovered as provided by the Act. The landowner accordingly contended that, by virtue of that sub-section, he was entitled to be heard then and there, notwithstanding r. 8, and that that rule was *ultra vires* the rule-making body. The county court judge offered to adjourn the matter, and the landowner refused the offer, which was subsequently withdrawn, the court making an order for the recovery of the tithe as claimed. In January, 1936, the appellant landowner took out a summons in the High Court for a writ of prohibition to the county court judge, the receiver and the tithe-owners,

hibit them from proceeding further in the matter of the ations. Porter, J., dismissed the summons and the landowner appealed.

TALBOT, J., said that it had been argued for the appellant that he did in fact appear before the court and ask to be heard, and that, by s. 2 (1) of the Act of 1891, it was accordingly a condition precedent to the making of the order for the recovery of the tithe that he should be heard. It had further been argued that, in so far as r. 8 purported to extend the power of the county court as given by s. 2 (1) of the Act, the rule was beyond the statutory powers of the rule-making body. By s. 2 (7) of the Act, rules under the Act might "regulate the procedure practice and costs" under the Act in county courts. That sub-section and s. 3 (1) showed that the appellant's construction of s. 2 (1) was unduly narrow. The fair meaning of all those provisions taken together was that, while the landowner must be heard if he appeared and desired to be heard, the procedure might be regulated by the body empowered to make rules under the Act.

ATKINSON, J., agreed.

COUNSEL: *Montgomery*, K.C., and *Cecil Binney*, for the appellant; *Sandlands*, K.C., and *A. H. Armstrong*, for the respondents.

SOLICITORS: *Butt & Bowyer* for *Rutter & Rutter*, Shaftesbury; *Solicitor to Queen Anne's Bounty* for *Ffooks & Grimley*, Sherborne.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Hollywood Silver Fox Farm Ltd. *v.* Emmett.

Macnaghten, J. 19th and 20th March; 8th April, 1936.

NUISANCE—NOISE—FIRING OF GUNS ON HIS OWN LAND BY DEFENDANT FOR PURPOSE OF ANNOYING PLAINTIFF—LIABILITY—MOTIVE—HOW FAR MATERIAL.

Action for damages and for an injunction for alleged nuisance by noise.

The plaintiff company, who carried on the business of breeding silver foxes on a farm adjoining the defendant's land, erected on their land a notice-board bearing the words "Hollywood Silver Fox Farm." The defendant, from whose land the notice-board was visible, objected to its erection and requested the plaintiffs' managing director to remove it, explaining that he considered it detrimental to the development of his own land as a building estate. The managing director having replied that he saw no reason for removing the notice-board, the defendant repeated his request and threatened that, if it were not complied with, he would shoot with black powder on his own land as near as possible to the plaintiffs' breeding pens. The plaintiffs again refused to remove the board. In April, 1935, during the breeding season for silver foxes, the defendant on four occasions sent his son to discharge a gun loaded with black powder near the plaintiffs' breeding pens. The plaintiffs' vixens were seriously frightened by the noise. Some of them miscarried, one devoured her cubs, and others refused to mate. The plaintiffs accordingly brought this action claiming damages and an injunction restraining the defendant from repeating the acts complained of. *Cur. adv. vult.*

MACNAGHTEN, J., said that the action again raised the question which was debated in *Allen* v. *Flood* [1898] A.C. 1, namely, whether the decision in the famous duck-decoy case, *Keeble* v. *Hickeringill* (1706–1707), 11 Mod. 74; 130, was well founded. If it were, it was a clear authority for saying that the defendant had committed an actionable wrong. It had been submitted for the defendant, on the authority of *Corporation of Bradford* v. *Pickles* [1895] A.C. 587, that, even if his conduct was malicious, he had committed no actionable wrong. Counsel argued that the defendant had committed no nuisance in the legal sense, and cited *Robinson* v. *Kilvert* (1889), 41 Ch. D. 88. It had there been held that the heating complained of was not of such a character as would interfere with the ordinary use of the rest of the house in question. There was authority, apart from *Keeble's Case*, *supra*, for the proposition that, in an action for nuisance by noise, the intention of the person making the noise must be considered. In *Gaunt* v. *Fynney* (1872), 8 Ch. App. 8, at p. 12, Lord Selborne clearly indicated that, in his opinion, in an action of nuisance by noise, distinct considerations applied if the noise was made maliciously. In *Christie* v. *Davey* [1893] 1 Ch. 316, North, J., at p. 326, said that he would have taken an entirely different view of the case before him if the acts complained of had been done innocently. *Ibottson* v. *Peat* (1865), 3 H. & C. 644, afforded an exact precedent for the present claim. All these cases had been decided before *Corporation of Bradford* v. *Pickles*, *supra*. *Keeble's Case*, *supra*, had been discussed fully in *Allen* v. *Flood*, *supra*. In his (his lordship's) opinion, the *Bradford Case*, *supra*, had no bearing on cases like the present and the plaintiff was entitled to succeed on the principle of *Keeble's Case*.

COUNSEL: *J. P. Eddy*, K.C., and *M. P. Picard*, for the plaintiffs; *T. G. Roche*, for the defendant.

SOLICITORS: *Chas. J. Odhams & Sons*; *A. J. Larcombe.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Furness Withy & Co. Ltd. *v.* Duder.

Branson, J. 28th April, 1936.

INSURANCE (MARINE)—RUNNING-DOWN CLAUSE—DAMAGE TO THIRD PARTIES—UNDERTAKING BY UNDERWRITERS TO INDEMNIFY—DAMAGE TO ADMIRALTY TUG EMPLOYED BY INSURED—TUG NEGLIGENTLY NAVIGATED—CONTRACTUAL LIABILITY IN INSURED TO INDEMNIFY ADMIRALTY—LIABILITY OF UNDERWRITERS.

Action under a policy of marine insurance.

The plaintiffs were the owners of the steamer "Monarch of Bermuda." The defendant was an underwriter of Lloyds. By the policy, underwritten by the defendant for fifteen-hundredths of £9,090, part of £1,000,000, the defendant insured the plaintiffs against the perils therein set out. The policy had a slip affixed to it containing a running down clause which provided ". . . if the ship hereby insured shall come into collision with any other ship and the assured . . . shall in consequence . . . become liable to pay . . . by way of damages . . . any sum . . . not exceeding . . . the value of the ship hereby insured we will pay the assured . . . such proportion of such sum . . . as our subscription hereto bears to the policy value of the ship hereby insured." In 1933 a collision took place between "The Monarch of Bermuda" and an Admiralty tug. The collision was due to the negligent navigation of the tug, which received damage to the extent of £120. The tug was engaged on the usual terms on which Admiralty tugs are engaged from H.M. dockyard at Bermuda. The terms were contained in Form D.461, which, so far as material, provided that the plaintiffs should "make good to the Admiralty all damage suffered by the Admiralty through injury to Admiralty property or any other cause . . . in any way connected with the service . . ." No other towage assistance was available except other Admiralty tugs, which could only have been engaged on the terms contained in Form D.461. The plaintiffs accordingly became liable to pay the Admiralty £120, and did so. They now claimed to recover that sum from the underwriters, the proportion claimed from the defendant being 4s. 8d. The defendant contended that the plaintiffs' liability to pay the £120 arose out of the towage contract and not out of the collision.

BRANSON, J., said that it was urged, for the plaintiffs that the real operating and proximate cause of the plaintiffs' liability was the collision, and that without it there would have been no liability. In his opinion the running-down clause must be read as one sentence, and he thought the true meaning of it

was that the underwriters would indemnify where, as the result of a collision, a legal liability had arisen to pay something by way of damages. The words "by way of damages" indicated some liability arising out of tort, not out of contract, and there was no such liability here. The claim therefore failed, and there must be judgment for the defendant.

COUNSEL: *A. T. Miller*, K.C., and *Stephen Furness*, for the plaintiffs; *H. U. Willink*, K.C., and *W. L. McNair*, for the defendant.

SOLICITORS: *Middleton, Lewis & Clarke*; *Wm. A. Crump and Son.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Moor Line, Ltd. *v.* **Mangan Export G. m. b. H.**

Branson, J. 18th May, 1936.

CHARTERPARTY—SHIP TO LOAD IN REGULAR TURN—PROVISIONS AS TO TIME FROM WHICH LOADING-TIME TO RUN—INTERPRETATION.

Consultative special case stated under s. 9 of the Arbitration Act, 1934.

By a charterparty dated 23rd April, 1934, made between the parties it was provided, *inter alia*:

(2) The steamer shall proceed to Nicolaieff . . . and there load . . . in the customary manner in regular turn with other steamers loading ore for account of the same charterers . . . a full and complete cargo . . .

(6) Time for loading to count from 6 a.m. after the ship is reported and ready in free pratique (whether in berth or not) in accordance with clause 2. . . . Time between noon on Saturday and 7 a.m. Monday not to count unless used, in which case half such time actually used to count.

(10) Laydays are not to commence to count before 10th June, 1934, unless loading sooner commenced.

The steamer arrived at Nicolaieff on 8th June, 1934. She was cleared and in free pratique, and notice was given of readiness to load on the same day. There was no customary loading berth available for the steamer on 8th June when she arrived, nor on 10th June, before when her laydays were not to begin to count, nor until 18th June, when loading in fact began. From 8th June to 18th June the steamer was waiting her usual turn, which usual turn for loading actually arrived on 18th June. The question for the opinion of the court was whether, having regard to the provisions in the charterparty, and in particular in clauses 2 and 6, the steamer's loading laytime began (*a*) at 6 a.m. after she arrived at the port and was in free pratique and ready to load and had given notice of readiness even though she had not reached her berth; or (*b*) not until she came on turn.

BRANSON, J., said that construction of the charterparty was difficult. The charterers contended that the words "in regular turn" in cl. 2 prevented time from beginning to run until the vessel was on turn. If, however, it had been intended that those words should govern the time for loading, one would have expected to find them in cl. 6, which dealt with that subject in particular. If the charterers were correct, all the provisions about time beginning in cl. 6 were otiose, for the matter would simply depend on when the vessel was on turn. He concluded, therefore, that the correct answer to the question raised by the arbitrator was that the laytime began at 6 a.m. in accordance with the alternative (*a*) in the question.

COUNSEL: *Cyril Miller*, for the charterers; *W. L. McNair*, for the shipowners, Moor Line, Limited.

SOLICITORS: *Sinclair, Roche and Temperley*: *Constant and Constant.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

For Table of Cases previously reported in current volume see page xiv of Advertisements.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

The Tithe Bill.

Sir,—The legal profession may not be concerned to consider whether or not this Bill is a fair compromise between tithe owner and landowner, but there are certain provisions which do require careful consideration.

It will be remembered that until 1836 the right of the tithe owner was in general the right only to a certain proportion of the produce of the land, there was no charge on the land itself. The Act of 1836 created a charge on the land, the amount of the charge fluctuating according to purely artificial rules, which owing to economic changes ceased in time to represent the old criterion of produce, but the Act of 1836 expressly did not impose any personal liability on the landowner. This Act created a centralised bureaucracy, originally the Tithe Commission, afterwards merged in the Land Commission, which in its turn became merged in the Ministry of Agriculture. Since 1836 there have been twelve amending Acts. In 1925 all ecclesiastical tithe rent-charges were vested in Queen Anne's Bounty, who during the last ten years have had the duty of collecting it. The present Bill proposes to create a new body, "The Tithe Redemption Commission," to be appointed by the Treasury for the purpose of ascertaining among other things the amount of tithe rent-charge, the land on which it is charged, and the owner of the land; a terminal annuity, in manner provided for by the Bill, is then to be substituted for the tithe rent-charge.

The Bill appears to be open to grave objections on the following points:—

(1) Clause 16 proposes entirely to alter the previous law and makes any instalment of an annuity a debt due to His Majesty from the owner of the land, with most drastic powers to enforce payment against the landowner; for instance the debt may under cl. 16 (4) and (5) be recovered by proceedings in the High Court or county court (upon which no doubt bankruptcy proceedings could be founded), and in any case the collector may distrain on the goods and chattels of the landowner evidently, wherever they may be found. Such an entire revolution of the law cannot fail to produce grave injustice. It is true that the tithe payer obtains some relief if the land is agricultural land (*within the definition of the Act*) and he obtains a certificate from the Surveyor of Taxes as provided in the 5th Sched., but that only applies to agricultural land. The landowner is defined by cl. 17 (1) as the estate owner in fee simple, so that by whatever means a man became owner, he will be personally liable for payment of the annuity, and it is evident that this will apply to trustees other than official trustees, who (as might be expected) are specially exempt under cl. 17 (4). In the case of charitable trusts the persons personally liable will be the managing trustees or committee. See also cl. 17 (5). This personal liability arises quite regardless of the actual value of the land, and even if it has no value, and especially in the case of trustees may work incredible hardship.

(2) The members of the Tithe Redemption Commission are under cl. 4 to be appointed by the Treasury and under the 2nd Sched. the Treasury can remove a member. Having regard to the very great powers conferred on the Commission, it would inspire more confidence in the impartiality of the Commission if the members were appointed and removable by the Lord Chief Justice.

(3) Clause 20 (1) deals with the recovery of arrears which became due before the appointed day and contains this very extraordinary provision, that the Court before which legal proceedings for the recovery of arrears are taken, *shall give effect to any directions given by the Commissioners.* Is not this unbridled bureaucracy? A Commission appointed in the

way proposed is to have power to dictate to the King's Courts of Justice as to what decision they are to give.

(4) Clause 38 (2) provides that the determination of the Commission shall be conclusive. It is submitted that there should be an appeal to the courts, at any rate on a point of law.

The following provision affects the conveyancer.

(5) Clause 9 (1) provides for a register to be prepared by the Commission by reference to a map, and under cl. 13 (8) an annuity shall be an incumbrance for the purposes of Law of Property Act, 1925, s. 183, but sub-cl. (1) says an annuity shall *not* be a land charge which may be registered under the Land Charges Act, 1925. One is not quite clear as to the effect of this. Will a purchaser's solicitors have to search in the register kept by the Commission; if so, where will it be kept?

Can we hope ever to have a Government not dominated by its permanent officials?

PERCY MAYLAM.

Canterbury.
8th June.

Reviews.

Local Government in Scotland. Second Edition, 1936. By Sir WILLIAM EDWARD WHYTE, Solicitor. Demy 8vo. pp. xvi and (with Index) 785. London, Edinburgh and Glasgow: William Hodge & Co., Limited. 25s. net.

This work was originally published by the author in February, 1925, and was designed to cover the whole field of local government activities in Scotland. The passing of the Local Government (Scotland) Act, 1929, so drastically altered the position in regard to local government north of the Tweed—particularly as regards the authorities charged with its administration and the scope of their powers, that the 1925 edition became more or less out-of-date; and the complete revision of the work now made and presented covers the whole subject in a manner which may be described as completely up-to-date. The volume embodies a full description of the constitution of the various local authorities, their powers and duties. It cannot fail to serve as a convenient book of reference not only to public officials and members of public bodies but also as a text-book for students in local government in every department of administrative activity. The volume embraces special chapters on public assistance, education, public health, licensing and all the various departmental matters which are embraced in the general term "local government." There is a very full index which adds materially to the usefulness of the volume.

My sixty years in the Law. By F. W. ASHLEY, for fifty-four years Clerk to the late Mr. Justice Avory. 1936. Demy 8vo. pp. xiii and (with Index) 328. London: John Lane, The Bodley Head. 15s. net.

One of the pleasantest things about this book of memoirs is that it is unpretentious. It does not aspire to high literary style, but it makes excellent reading. The author observed acutely and intelligently, retained what he noted and has here set down much that is amusing and informative, much that is well salvaged from oblivion. Although the greater part of his career was spent as clerk to Mr. Justice Avory, the scope of this book is much wider than the personality of a single man. The chapter on the old days at the Old Bailey is particularly well done, and from beginning to end the pageant of sixty years of legal evolution is skilfully marshalled. As a tribute to the memory of the great judge whom the author served, as well as by reason of its own intrinsic merits, this work is not unworthy of a permanent place in legal literature and is all the better for its simple sincerity.

Books Received.

Index to Conditions of Sale in General Use, with some Notes on the Preparation and Perusal of Contracts. By THOS. R. ELDRIDGE, Solicitor of the Supreme Court. 1936. Royal 8vo. pp. 14 (with Preface). London, Birmingham, Liverpool and Glasgow: The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

The Local Government of the United Kingdom (and the Irish Free State). By JOHN J. CLARKE, M.A., F.S.S., of Gray's Inn and the Northern Circuit, Barrister-at-Law. Tenth Edition, 1936. Demy 8vo. pp. xviii and (with Index) 819. London: Sir Isaac Pitman & Sons, Ltd. 15s. net.

Patents for Inventions. By J. EWART WALKER, B.A., of the Inner Temple, and R. BRUCE FOSTER, B.Sc., of Lincoln's Inn, Barristers-at-Law. Second Edition, 1936. By J. EWART WALKER, B.A., of the Inner Temple, and JERVIS ROSCOE, B.Sc., of Gray's Inn, Barristers-at-Law. Royal 8vo. pp. xxxiii and (with Index) 243. London: Sir Isaac Pitman & Sons, Ltd. 15s. net.

The Juridical Review. Vol. XLVIII, No. 2. June, 1936. Edinburgh: W. Green & Son, Ltd. 5s. net.

Police Duties. Two hundred Points in Police Law, with an Appendix of Examination Questions. 1936. London: The Police Review Publishing Co., Ltd. Price 2s. 6d., post free.

Societies.

Middle Temple.

GRAND DAY.

Tuesday, 16th June, being the Grand Day of the Trinity Term, the Treasurer and Masters of the Bench entertained at dinner the following guests: Viscount Hailsham (the Lord Chancellor), The Marquess of Lothian, C.H., Viscount Monsell, G.B.E., Viscount Swinton, G.B.E., M.C., The Bishop of London, The Bishop of St. Asaph, Lord Gainford, Lord Arnold, Sir Isaac Isaacs, G.C.M.G., Mr. Arthur Greenwood, M.P., Mr. A. V. Alexander, M.P., Mr. Justice Talbot (Treasurer of the Inner Temple), Sir Michael Myers, K.C.M.G. (Chief Justice of New Zealand), Sir Claud Schuster, G.C.B., C.V.O., K.C., Sir Henry Badeley, K.C.B., C.B.E., Judge Hill Kelly, The Vice-Chancellor of Oxford University (Mr. A. D. Lindsay), The Vice-Chancellor of Cambridge University (Mr. G. H. A. Wilson), Professor Arnold McNair, C.B.E., Mr. W. T. S. Stallybrass, O.B.E., Canon Griffith Thomas.

The following Masters of the Bench were present: The Master Treasurer (The Rt. Hon. Viscount Sankey), Sir Ellis Hume-Williams, Bart., K.C., Mr. Justice Horridge, Viscount Dunedin, Sir Alfred Tobin, K.C., Mr. L. de Gruyther, K.C., Sir Holman Gregory, K.C., Mr. Heber Hart, K.C., The Hon. S. O. Henn Collins, K.C., Viscount Finlay, Mr. A. M. Dunne, K.C., Mr. J. Bruce Williamson, Mr. A. M. Sullivan, K.C., Mr. W. E. Vernon, Viscount Rothermere, Mr. J. Scholefield, K.C., Mr. W. Craig Henderson, K.C., Mr. J. D. Cassels, K.C., Sir Edward Tindal Atkinson, Lord Strathcarron, K.C., Mr. J. Bowen Davies, K.C., Mr. J. M. Paterson, Col. Sir Henry F. MacGeagh, K.C., Judge Lilley, Sir Thomas Molony, Bart., Lord Normand, Mr. A. Ralph Thomas, Mr. Raymond Needham, K.C., Mr. Henry Johnston, Mr. Trevor Hunter, K.C., Mr. Bruce Thomas, K.C., The Marquis of Reading, K.C. Together with: The Rev. J. F. Clayton, M.C. (Reader at the Temple Church), The Under Treasurer (Mr. T. F. Hewlett).

The Hardwicke Society.

EX-PRESIDENT'S DEBATE.

A meeting of the Society was held on Friday, 12th June, at 8.15 p.m., in the Middle Temple Common Room, the President, Mr. T. H. Mayers, in the chair. Mr. Colin Pearson (ex-President) moved:—

"That this House disapproves of the Modern Young Woman."

Mr. H. M. Pratt (ex-President) opposed.

There also spoke Mr. J. Buchan Ford (ex-President), Mr. Granville Sharp (ex-President), Sir Cecil Walsh (ex-President), Mr. P. B. Morle (ex-President), Mr. Campbell Lee (ex-President), Mr. Geoffrey Tyndale (ex-President),

Prof. R. S. T. Chorley (ex-President), Mr. D. A. Stride (ex-Treasurer), Mr. A. Newman Hall (Immediate Past President), Miss Young, Miss McGarvey, Mr. Campbell Prosser, Mr. J. A. Petrie (Hon. Treasurer), Mr. G. E. Llewellyn Thomas (Hon. Secretary).

The hon. mover having replied, the House divided, and the motion was lost by four votes.

Medico-Legal Society.

An ordinary meeting of the Society will be held at Manson House, 26, Portland-place, W.1, on Thursday, the 25th June, at the conclusion of the annual general meeting, when a paper will be read by J. B. Montagu, Esq., Barrister-at-law, on "The Development in Criminal Law and Penology since 1910." Members may introduce guests to the meeting on production of the member's private card.

SESSION 1935–36.

The annual general meeting of the Society will be held at Manson House, 26, Portland-place, W.1, on Thursday, the 25th June, at 8.15 p.m.

BUSINESS.

1. Election of officers and council for Session 1936–37. The following nominations have been made by the Council in accordance with the rules of the Society to fill vacancies which have arisen: President, C. A. Mitchell, Esq., D.Sc., F.I.C.; Vice-Presidents, Sir Stanley Woodwark, C.M.G. (Dr. F. J. McCann and Mr. W. A. Chadwick retire in rotation under Rule 10). The following has been nominated: Dr. G. Roche Lynch. Hon. Treasurer, Sir Walter Schroder, K.B.E. Hon. Editors of Transactions, Dr. Gerald Slot and Mr. Everard Dickson. Hon. Auditors, Mr. H. Bensley Wells and Col. C. T. Samman. Members of Council: The following retire by seniority under Rule 7: Mr. L. E. C. Norbury, F.R.C.S., Judge W. G. Earengey, LL.D., K.C., and Mr. Frederick Levy. The following nominations have been made: Dr. F. J. McCann, Mr. Edward Hincks, M.B.E., B.Sc., F.I.C., and Dr. Donald C. Norris, B.S., F.R.C.S. Hon. Secretaries, W. G. Barnard, M.R.C.P., M.R.C.S., and Mr. A. A. Romain.

2. Report of the Hon. Secretaries presented to and adopted by the Council.

3. Report of the Hon. Treasurer and presentation of accounts.

Parliamentary News.

Progress of Bills.

House of Lords.

Axbridge Rural District Council Bill.
Read First Time. [16th June.

Brighton Corporation Bill.
Read Third Time. [11th June.

Cheltenham and Gloucester Joint Water Board, etc., Bill.
Read Second Time. [16th June.

Cirencester Gas Bill.
Read Second Time. [16th June.

Darlington Corporation Trolley Vehicles (Additional Routes) Provisional Order Bill.
Read First Time. [11th June.

Derby Corporation (Trolley Vehicles) Provisional Order Bill.
Read First Time. [11th June.

Doncaster Corporation (Trolley Vehicles) Provisional Order Bill.
Read First Time. [11th June.

Education Bill.
Read Second Time. [16th June.

Gas Light and Coke Company (No. 2) Bill.
Read First Time. [16th June.

Gravesend and Milton Waterworks Bill.
Commons' Amendments agreed to. [11th June.

Ilfracombe Urban District Council Bill.
Read Third Time. [11th June.

Marriages Provisional Order Bill.
Read First Time. [11th June.

Ministry of Health Provisional Order (Lancaster) Bill.
Read First Time. [11th June.

Ministry of Health Provisional Order (Ramsey and Saint Ives Joint Water District) Bill.
Read First Time. [11th June.

Ministry of Health Provisional Order (Tees Valley Water Board) Bill.
Read First Time. [11th June.

Ministry of Health Provisional Order Confirmation (Barnsley) Bill.
Read Second Time. [17th June.

Ministry of Health Provisional Order Confirmation (Plympton St. Mary) Bill.
Read Second Time. [16th June.

Ministry of Health Provisional Order Confirmation (Ripon) Bill.
Read Second Time. [16th June.

Ministry of Health Provisional Order Confirmation (St. Helens) Bill.
Read Second Time. [17th June.

Ministry of Health Provisional Order Confirmation (West Hartlepool) Bill.
Read Second Time. [16th June.

North West Kent Joint Water Bill.
Read Third Time. [11th June.

Pensions (Governors of Dominions) Bill.
Read First Time. [16th June.

Pier and Harbour Provisional Order (Gloucester) Bill.
Read First Time. [11th June.

Private Legislation Procedure (Scotland) Bill.
Read First Time. [16th June.

Public Health (Drainage of Trade Premises) Bill.
Read Second Time. [11th June.

Reading Corporation (Trolley Vehicles) Provisional Order Bill.
Read First Time. [11th June.

Retail Meat Dealers' Shops (Sunday Closing) Bill.
Reported, with Amendments. [16th June.

Road Traffic (Driving Licences) Bill.
Reported, without Amendment. [11th June.

Rochester Corporation Bill.
Read Third Time. [11th June.

South Staffordshire Water Bill.
Agreed to, with Amendments. [16th June.

Surrey County Council Bill.
Read Second Time. [16th June.

Weights and Measures Bill.
Read First Time. [11th June.

Wolverhampton Corporation Bill.
Read First Time. [11th June.

York Gas Bill.
Read First Time. [16th June.

House of Commons.

Air Navigation Bill.
Reported. [10th June.

Axbridge Rural District Council Bill.
Read Third Time. [12th June.

Brighton Corporation Bill.
Read First Time. [11th June.

Cornwall Electric Power Bill.
Read Third Time. [17th June.

Dover Corporation Bill.
Read Second Time. [15th June.

Finance Bill.
Reported, with Amendments. [17th June.

Gas Light and Coke Company (No. 2) Bill.
Read Third Time. [15th June.

Ilfracombe Urban District Council Bill.
Read First Time. [11th June.

Land Drainage Provisional Order (No. 1) Bill.
Read Second Time. [17th June.

Land Drainage Provisional Order (No. 2) Bill.
Read Second Time. [17th June.

Land Registration Bill.
Reported, without Amendment. [11th June.

London County Council (Money) Bill.
Read Second Time. [11th June.

Ministry of Health Provisional Order (North Herts Joint Hospital District) Bill.
Read Second Time. [17th June.

North West Kent Joint Water Bill.
Read First Time. [11th June.

Pensions (Governors of Dominions, &c.) Bill.
Read Third Time. [12th June.

Post Office (Sites) Bill.
Read Second Time. [17th June.

Rickmansworth and Uxbridge Valley Water Bill.
Read Third Time. [17th June.

Rochester Corporation Bill.
Read First Time. [11th June.

Sea Fisheries Provisional Order (No. 1) Bill.
Read Second Time. [17th June.

Sea Fisheries Provisional Order (No. 2) Bill.
Read Second Time. [17th June.

South Staffordshire Water Bill.
Read Third Time. [12th June.

Weights and Measures Bill.
Read Third Time. [10th June.

York Gas Bill.
Read Third Time. [15th June.

Legal Notes and News.

Honours and Appointments.

Mr. W. H. BAINES, Deputy Town Clerk of Liverpool, has been recommended as Town Clerk in succession to Mr. W. Moon, who retires in September. Mr. Baines was admitted a solicitor in 1926.

Professional Announcements.

(2s. per line.)

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

A new county court for Woolwich will be opened at Powis Street early in July.

Prior to the annual meeting of the Society of Solicitors and Procurators for the Eastern Division of Fife at Cupar, Mr. T. W. Davidson, Dean of the Society, presented a cheque to Mr. W. J. Allan, who recently retired from the position of Senior Sheriff-Clerk Depute at Cupar. Mr. Allan made suitable acknowledgment.

The provincial summer conference of the Incorporated Society of Auctioneers and Landed Property Agents will be held in University College, Oxford, from 8th to 12th July. The opening ceremony will be performed by the Mayor (Alderman Mary Townsend) after which the President (Alderman K. R. England, of Leamington Spa) will read his presidential address. Among the guests who will take part in the subsequent discussion are Mr. Herbert Nelson, Secretary of the National Association of Real Estate Boards of the U.S.A., and Mr. W. H. Bosley, of Toronto.

At the Conference Dinner on Friday, 10th July, Sir Harold Bellman will propose the toast of the Society.

Excursions arranged include visits to the various colleges, to Blenheim Palace and grounds, to the Morris Motor Works, and to Abingdon, returning by river.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT I.	GROUP I. MR. JUSTICE EVE. Non-Witness.	GROUP I. MR. JUSTICE BENNETT. Witness Part I.
	Mr.	Mr.	Mr.	Mr.
June 22	Hicks Beach	Ritchie	More	*Andrews
,, 23	Andrews	Blaker	Ritchie	*More
,, 24	Jones	More	Andrews	*Ritchie
,, 25	Ritchie	Hicks Beach	More	*Andrews
,, 26	Blaker	Andrews	Ritchie	More
,, 27	More	Jones	Andrews	Ritchie

	GROUP I. MR. JUSTICE CROSSMAN. Witness Part II.	MR. JUSTICE CLAUSON. Witness Part II.	GROUP II. MR. JUSTICE LUXMOORE. Witness Part I.	MR. JUSTICE FARWELL. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
June 22	Ritchie	*Hicks Beach	*Blaker	Jones
,, 23	*Andrews	Blaker	*Jones	Hicks Beach
,, 24	More	*Jones	*Hicks Beach	Blaker
,, 25	*Ritchie	Hicks Beach	Blaker	Jones
,, 26	Andrews	*Blaker	*Jones	Hicks Beach
,, 27	More	Jones	Hicks Beach	Blaker

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

A UNIVERSAL APPEAL

TO LAWYERS: FOR A POSTCARD OR A GUINEA FOR A MODEL FORM OF BEQUEST TO THE HOSPITAL FOR EPILEPSY AND PARALYSIS, MAIDA VALE, W.9.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 25th June, 1936.

	Div. Months.	Middle Price 17 June 1936.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	115½	3 9 3	2 19 10
Consols 2½%	JAJO	85	2 18 10	—
War Loan 3½% 1952 or after	JD	105⅝	3 6 3	3 0 11
Funding 4% Loan 1960-90	MN	116½	3 8 8	3 0 5
Funding 3% Loan 1959-69	AO	103½	2 18 0	2 15 10
Funding 2½% Loan 1956-61	AO	95	2 12 8	2 15 7
Victory 4% Loan Av. life 23 years	MS	114½	3 9 10	3 2 3
Conversion 5% Loan 1944-64	MN	117¾	4 4 10	2 7 7
Conversion 4½% Loan 1940-44	JJ	108½	4 2 11	2 13 1
Conversion 3½% Loan 1961 or after	AO	107	3 5 5	3 1 10
Conversion 3% Loan 1948-53	MS	104½	2 17 5	2 11 2
Conversion 2½% Loan 1944-49	AO	101½	2 9 3	2 5 9
Local Loans 3% Stock 1912 or after	JAJO	96¾	3 2 0	—
Bank Stock	AO	374	3 4 2	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	85½	3 4 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	94½	3 3 6	—
India 4½% 1950-55	MN	115	3 18 3	3 3 1
India 3½% 1931 or after	JAJO	97	3 12 2	—
India 3% 1948 or after	JAJO	85	3 10 7	—
Sudan 4½% 1939-73 Av. life 27 years	FA	119	3 15 8	3 8 3
Sudan 4% 1974 Red. in part after 1950	MN	116	3 9 0	2 12 4
Tanganyika 4% Guaranteed 1951-71	FA	115	3 9 7	2 15 4
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109	4 2 7	2 14 0
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	109	3 13 5	3 7 0
*Australia (C'mm'nw'th) 3¼% 1948-53	JD	102	3 13 6	3 10 10
Canada 4% 1953-58	MS	110½	3 12 5	3 3 9
*Natal 3% 1929-49	JJ	101	2 19 5	—
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	101	2 19 5	2 17 6
Nigeria 4% 1963	AO	113	3 10 10	3 5 5
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 2
South Africa 3½% 1953-73	JD	107	3 5 5	2 19 5
*Victoria 3¼% 1929-49	AO	100	3 10 0	3 10 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	97	3 1 10	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	106½	3 5 9	3 0 2
Leeds 3% 1927 or after	JJ	95xd	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	80	3 2 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	94½	3 3 6	—
Manchester 3% 1941 or after	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49	MJSD	100¼	2 9 10	—
Metropolitan Water Board 3% "A" 1963-2003	AO	95	3 3 2	3 3 8
Do. do. 3% "B" 1934-2003	MS	97	3 1 10	3 2 1
Do. do. 3% "E" 1953-73	JJ	100xd	3 0 0	3 0 0
Middlesex County Council 4% 1952-72	MN	114	3 10 2	2 17 10
† Do. do. 4½% 1950-70	MN	115	3 18 3	3 3 1
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	106½xd	3 5 9	3 3 5
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	114	3 10 2	—
Gt. Western Rly. 4½% Debenture	JJ	125½	3 11 9	—
Gt. Western Rly. 5% Debenture	JJ	138½	3 12 2	—
Gt. Western Rly. 5% Rent Charge	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	131½	3 16 1	—
Gt. Western Rly. 5% Preference	MA	119½	4 3 8	—
Southern Rly. 4% Debenture	JJ	111xd	3 12 1	—
†Southern Rly. 4% Red. Deb. 1962-67	JJ	113xd	3 10 10	3 5 0
Southern Rly. 5% Guaranteed	MA	131½	3 16 1	—
Southern Rly. 5% Preference	MA	121½	4 2 4	—

*Not available to Trustees over par. †Not available to Trustees over 115
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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Solicitors: Messrs. Finch, Jennings & Geare, 2, Gray's Inn-square, W.C.1.

By direction of a Beneficiary.

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amounting to

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